

WASHINGTON STATE GAMBLING COMMISSION

MINUTES
SPECIAL COMMISSION HEARING
FRIENDLY LAWSUIT/TRIBAL-STATE CLASS III GAMING
WEDNESDAY, NOVEMBER 11, 1998

Acting-Chairman Forrest called the meeting to order at 9:30 a.m. at the DoubleTree Inn, SeaTac, Washington.

MEMBERS PRESENT: **LIZ McLAUGHLIN, Chairman; and**
 MARSHALL FORREST, Vice Chairman;
 and Ex Officio Members SENATOR RAY SCHOW, and
 SENATOR MARGARITA PRENTICE

OTHERS PRESENT: **BEN BISHOP, Executive Director;**
 AMY PATJENS, Public Affairs Manager;
 JIM PHARRIS and JONATHAN McCOY,
 Assistant Attorneys General; and
 SUSAN YEAGER, Executive Assistant

Chairperson McLaughlin said the "Friendly Lawsuit" between the Chehalis Confederated Tribes and the state of Washington. She explained that Washington State and 12 tribes went to Federal District Court and asked if slot machines were legal in the state of Washington. Judge Van Sickle made a decision that they were not legal, but some type of machine gambling probably was. The state and the tribes have been negotiating for a number of years and as a result there was a public hearing by the Washington State Gambling Commission in Spokane. She went on to explain that because she was unable to be the chairperson for that meeting, she had asked Commissioner Marshall Forrest to continue as Acting Chairperson and conduct today's meeting. She introduced the head table and then turned the public hearing portion of the meeting over to Acting-Chairman Forrest.

Acting-Chairman Forrest said today's meeting was a public hearing on the proposed amendment to the tribal state gambling compacts and they would be using the same format. There would be presentations by the staff to reinforce the information for the commissioners and also to educate members of the public who weren't at the Spokane meeting. Public comment would follow, but because of the time constraints he requested everyone speaking to hold their remarks to five minutes and that they would be taken in turn by the way they signed up. He said today was the last day to give public information to the commissioners because they planned to take final action in Vancouver and there would be no further public testimony after today. He explained the schedule and that there would be experts to explain the mechanical details of the proposed games and depending on how long they took, the remaining time could be used for public comment up until 4:30 p.m.

Director Bishop said he would do his part of the presentation first, because Assistant Attorney General Jim Pharris had been delayed by traffic and will later talk about the legal aspects of the lawsuit. He said the presentation would be an overview of the proposed tribal lottery system and some of the provisions that are in the twelve compacts that will be presented tomorrow.

Chairperson McLaughlin asked Director Bishop to explain that this was just the same thing, but it's easier for them to see it. She said she didn't want the audience to think they were getting other information.

Director Bishop said the television has the same pictures that they can see. He gave a PowerPoint Presentation and said the lottery system is actually modeled after the State Lottery,

the different being that it would be played in an electric environment that includes two games -- a scratch ticket lottery game and an online lottery game which is the same as the state lottery. He showed a stick diagram of the system with both sides of it which looks and is complicated. He then showed the scratch ticket side of the system. This includes a manufacturer server or computer, a ticket server that actually delivers the tickets in electronic forms to the player terminals and player terminals they can note that the player terminals look very close to slot machines what people anticipate would be slot machines. Some of the functions of the system, the manufacturer computer manufactures the games, divides them into subsets much the same way as the state lottery does and delivers these subsets in data form to the ticket server. The little representation in the middle would be the data and the way its going and once it goes to the ticket server, it is set the same as a pull tab or scratch ticket lottery. The manufacturing process is very similar to the state lottery except from the point where it goes out of the manufacturing computer in the state lottery that would send a signal to the printer to print the actual tickets. In this case it just merely delivers the data to the ticket server. The ticket server actually just stores the tickets, delivers them when it gets a request from the player terminal and also acts to route accounting data back to the accounting system.

Director Bishop said that the next thing they would do would be to go through a comparison with the state lottery and the tribal lottery for the scratch ticket games. The first thing would be the tickets. Or do they have predetermined outcomes. Yes, state lottery and the tribal lottery. The composition of the tickets themselves, of course, in this state lottery you get a paper ticket; in the tribal lottery you will get a video display only.

Does the ticket require the player to open it? Yes, certainly, in the state lottery you have to scratch. The tribal lottery will also require that the player do a function to open it. There will be some interaction with the ticket -- either by pushing a button or touching a screen the rubbing the screen, or whatever.

Limitations. Number of games. The state lottery has no limitation on the number of games they could have in play. The same for the tribal lottery. There's no size limit from the state lottery. They can be a million, two million, whatever. The same with the tribal lottery system. The only requirement is that the size must be finite in character and for the mathematicians, the finite would mean that they would be selecting something from a population without replacement. There's no limit on wagers from the state lottery. The Lottery Commission can set that themselves. There is a limit on the tribal lottery -- a maximum of \$5 per ticket. Dollar value of prizes, how big a prize can be or how small, there's no limitation on the Lottery Commission and there's no limitation on the tribal lottery. Prize pay out as a percentage of sales. For the state lottery it does have a prize pay out limitation of 45 percent minimum. For the tribal lottery it will a 75 percent minimum.

Machines. The state lottery mechanically dispenses a paper ticket. In the tribal lottery, the ticket server computer will electronically dispense the ticket to the player terminals. The machines in the state lottery that is in convenience and grocery stores, accept dollar bills. However, dispensing cash is prohibited in the tribal lottery. Neither the state or the tribal lottery dispense cash at this point in time. It is especially prohibited in the tribal lottery, but not prohibited for the state. The state does not allow replay their winnings should they have a winning ticket. The tribal lottery does allow replay of winnings.

On-line game. There is only one server/computer. This computer serves the function of only randomly drawing the numbers for the on-line game. This would be the same function that they would see for the lotto game would be the drawing of the ping pong balls or in the case of Keno actually a computer is used in that, but this would be done purely by electronic. The other function of the computer in this game is to route data to and from the player terminals to the accounting system. The player terminals in the case of the on-line system would offer a menu of the choice of games, provide a means for accepting wagers and a means for players to check their tickets and also allow for players to make their choices in their numbers that they would pick to play in the game. A comparison of the on-line game with the state lottery the number of games that would be allowed. The state lottery currently has five games; the tribal lottery would be allowed the same five games.

Acting-Chairman Forrest asked if five games means five different games and over what period of time do the five games operate between the state and the tribal. **Director Bishop** said the state has Keno, the daily game are drawn daily. They have the Lucky for Life, Quinto and Lotto, which is getting drawn twice weekly. There's a statutory limitation that the state lottery cannot have drawings in less than 24 hours without permission from the Legislature.

Acting-Chairman Forrest asked if there would be any equivalent limitation on the tribal lottery. **Director Bishop** said tribal lottery was every 30 minutes – a minimum of 25 minutes wait and then once they start drawing, there's a further limitation that requires that all of the games be drawn within five minutes. The effectiveness of that is that there will be at least 25 minutes cool-down period between one draw and the next game.

Senator Prentice said the state lottery quotes the odds – one in seven million, or so. She wondered if anyone had thought of that for the tribal machines. **Director Bishop** said that was not a requirement of the game and it was not a part of the compact in any case. **Senator Prentice** asked if the Lottery Commission could alter the replay of winnings without action of the Legislature because it says that it is not prohibited. **Director Bishop** said it was his understanding that they had looked at the possibility of allowing a player to put their ticket back in the mechanical machines and to receive a credit to be played for only a ticket – it could not be cashed out at that point in time. There's scheduled to be some people from the Lottery Commission later that could answer her question better.

Chairperson McLaughlin said it seemed to her that there is a kind of replay of credits at the state because the winning ticket can be turned in and just have them reissue a ticket to the player, so it is kind of a replay. **Director Bishop** said that technically that could be said to so. If he were to walk up to the retailer and he has a \$3 winner or a \$1 winner that back when he used to play the lottery that they would always ask him if he would like to have his cash or would he like to have it in additional tickets. He said he had the option. In a tribal lottery a player also has the option at all times of cashing out their winnings. They do have an easier method of replaying their credits just by pushing a button. **Chairperson McLaughlin** asked if she were correct in the fact that the tribes have the right now to have a lottery and scratch tickets within their casinos. **Director Bishop** said the current compacts allow that they could operate a lottery similar in form to the state merely by submitting their rules of play and other technical requirements to the Commission staff and it would reviewed to see that it met the criterion of the state.

Chairperson McLaughlin said that some people say that these electronic machines are not a slot machines because the player is not playing against the machine but rather against the computer within the casino itself. But others say it is still a slot machine because without that computer, the player could not play the terminal, so it's an integral part of the machine. Chairperson McLaughlin said on the one hand it is an integral part of the machine, but then on the other hand, the lottery is the same way --- The money a player gives to the clerk in the store where the machine is located is worthless without the apparatus in Olympia they use to dispense the numbers from, so that's an integral part of that machine, too.

Director Bishop agreed that that was a very technical difference and he said he would have to call on the experts that would be testifying later who would be able to lend some light on the differences and similarities between the system.

One of the experts from the audience offered to answer Chairperson McLaughlin's question, but **Acting-Chairman Forrest** asked if the speaker could wait until after Director Bishop's presentation and then the speaker could come forward.

Director Bishop said that the types of prizes that are offered the on-line lottery, the state lottery has both a mix of parimutuel prizes and predetermined or preset and the tribal lottery would have

the same. The time sequence of drawings for the state lottery is limited to once every 24 hours. The tribal lottery's time frame is once every 30 minutes with the caveat that all of them must be drawn within the five-minute period. In the state lottery, the method of drawing can be electronic or manual. He was fairly certain that there was no limitation on how it's drawn. The tribal lottery would be drawn purely electronically although there was no prohibition that they might not do it some other way. In the tribal lottery they are required to allow players to pick their own numbers. In the state lottery they have that option and they also allow for a quick pick or to let the machine pick the numbers. The tribal lottery also allows this. In the state lottery the player gets a paper ticket and in the tribal lottery, the player will get a paper ticket or they will have their selections encoded on a Smart Card or some other method, but they will have their selections recorded.

Acting-Chairman Forrest asked if that were the player's choice whether it's paper or electronic and the tribal lottery, or is it the casino's choice. **Director Bishop** said it was the casino's choice. In the state lottery, a player has six months to redeem a winning ticket and in the tribal lottery, they must be afforded at least 48 hours to turn in a winning ticket. The state lottery is prohibited by Statute from joining with other states to have their lottery. In the compacts, the tribes are currently not authorized to do multi-jurisdiction although there are requirements in there that it could come before the Gambling Commission and it could be approved by the Commission under the compact.

Director Bishop said that the player terminals are not capable of being a stand-alone gaming device. This means that the player cannot go up to this player terminal and play a game without it being connected to something else. There's not the capability of it being a stand-alone gaming device.

Chairperson McLaughlin asked if the same thing was taking place on each gaming device. **Director Bishop** explained that the same games would be going on, but there is the possibility that within the casino, they might have different choices at different terminals. For example, a player might play five scratch ticket games at one group of terminals that are hooked to a system and then the player might go to another group or island of terminals that may have different games and they might have games for a quarter all networked together and there might others that would be a \$1 or whatever. **Chairperson McLaughlin** began to give a hypothetical example that she and Director Bishop were playing the same lottery game and they are playing against that computer pick and they were playing against each other and then she changed her mind and realized if that happened they both could win.

Director Bishop said if they were playing on-line game, they would be competing against the casino because if he and chairperson McLaughlin picked the same numbers, say 1-2-3, and they happened to draw 1-2-3, he was fairly certain that they would split the prize the same as the state lottery. In the case of the scratch tickets, there are predetermined outcomes that are sitting in a queue and whoever selects the next ticket will get the top in the queue and if happens to be a winner, then she gets it. If he pushes a microsecond behind her, she gets the next one down.

Chairperson McLaughlin asked if the machine could play scratch tickets in between that 30 minutes so she wouldn't have to sit at the machine and not do anything. **Director Bishop** said they would be multipurpose terminals. The player terminal does not accept or dispense cash – a key component. There will be no handles or slot-type spinning reels, so it doesn't have all of the amenities of the so-called slot machine or one-armed bandit. It will be used for both games. It is a multipurpose and he thought one of the attorneys at the last hearing said that they were "dumb" terminals and he said he would leave it to the "techies" to tell them what that meant. **Director Bishop** said there were limitations on the number of terminals that a tribe can have; 500 in year one; 750 in year two after they go through a process and get approval from the Gambling Commission. There's also a caveat within the compacts that would allow tribes to sell or lease their rights to the terminals to another tribe with a compact. This would allow some tribe that maybe didn't have the market because of location, they might want to only operate 100 terminals

and to lease some of theirs to people who had a larger market.

Director Bishop said there would be a joint tribal-state regulation of this the same way that they have a joint partnership in regulating the current activities. The state gaming agency will approve gaming testing labs, which will be a very important component in regulating this. Technical computer equipment requires technicians and some states have their own labs. At this point in time they didn't think it would be economically feasible for them to have a full-blown lab for this so the tribes would be contracting for it. But the state gaming agency will get to select license and completely review those that go on the list. The labs will test all components and games. The state gaming agency will approve the systems and modifications before they're put into place. He said he knew that it had been a concern of some of the commissioners and his concern that they don't have something they can look at – they don't know what's coming. At least they will get a chance to approve it before it goes into a play so it will actually be in front of them so there will be a chance to do it. The lab will have an opportunity to completely evaluate it and go through it.

Director Bishop said that the state gaming agency will be provided a complete copy of the system. This would allow them in the case to do work outside the lab if they so wished. If they were having a reoccurring problem to try to duplicate the problem in their own system. That includes all the hardware components, all written documentation including all program object and source codes – and that's some more "techie" language. He assumed that someone knew what source codes are, but he doesn't. The tribe will pay for their regulatory fees. They will pay the set-up cost for the system up front. This includes the fact that they have committed \$250,000 to get started on this that would allow this to man three FTEs and to get the basic equipment that they would need to regulate this. They will pay the lab fees, any costs that the State Gaming Agency would incur as far as the day-to-day regulation of the system outside of the lab fees and for investigating player complaints would be reimbursed to the State Gaming Agency.

Chairperson McLaughlin asked if it were in the actual compact amendment that the tribes before they put these machines in if they are approved have to be up to date in payments to the Gambling Commission. **Director Bishop** said the compact calls that any tribes that are in default or being late currently paying their current regulatory fees, all must be paid or there must be arrangements made, in other words a separate contract to work this out before any tribe can operate any of these.

Chairperson McLaughlin asked what the consequences would be if they were to default. **Director Bishop** said that if he understood her question, it was what happens if they don't pay these fees when they owe them? Chairperson said that was correct. **Director Bishop** said the only thing he could say to that was that most of the fees will be lab fees and if they get in default with the labs, they won't provide work and also if there is a provision in the compact that says that if a lab has debts owed to it from a tribe, that in the Commission's opinion would cause them to not be independent, they could remove the lab from being a qualified lab and therefore they would have to go somewhere else from that perspective. As far as getting payment under the regular compact, they would have to rely on the current system within the compact. He thought that what they would do, as his position as the Director of the Gaming Commission, is that he doesn't anticipate that they will ever find themselves in this position again because he intends to recommend to the Gambling Commission that as soon as someone does not pay their fees in the future, that they immediately go to the terms of the compact and seek to close the issue. He said that during negotiations there were discussions about "pulling the plugs" on them, but he didn't think that was a practical approach – that there has to be some legal remedy involved other than that, so he will recommend that they seek their legal recourse under the compact.

Senator Prentice asked if she heard him correctly that all of the tribes must have their impact fees paid before any of them get their machines. **Director Bishop** said it was either that or in the case of some of the tribes that were behind in their payments, staff have worked out payments

schedules with them and that currently talking with another tribe that is in that situation. At present there are three tribes that would be affected and that was the agreement. **Director Bishop** said the compact calls for one percent of machine net win to be available for payments of local impacts. He said there's a convoluted formula for how that would be applied. One-half of a percent would be for non-tribal charities.

Commissioner Forrest asked if the net win is determined by including things like depreciation, other overhead, and that kind of thing. **Director Bishop** said net win for this purpose was input into the machines less prize and less the depreciation for the machines. All other overhead would not be a deduction.

Chairperson McLaughlin said that, right now, all the compacts with the tribes include a provision of 2 percent for local impact payments. **Director Bishop** said the amount in the compact of 2 percent is only on the table games net win, but not pull tabs, bingo, off-track betting or keno – only table games.

Senator Prentice asked if the 2 percent on the table games remains unchanged and if 1 percent applies to this. **Director Bishop** said yes. He said up to one-half of the remainder – one-half goes to charity the other one-half up to the limit of that would go to supplement the current compact requirements for impacts from the table games. In other words, there would be additional one-half a percent of this to go to impacts demonstrated. Should that not be necessary, the any remainder would go to tribal programs that benefit the community and from this perspective, it would give the tribes some first call on money that would go to senior centers, food banks. He said one tribes sponsors a boys and girls club – those types of things is where the remainder would go after that. It calls for the entire 1 percent to be available. There are some caveats to it because of a requirement within IGRA that requires that the tribe has to make a profit before they would be compelled to make contributions to charities. They negotiated that this profit, since profit is such a soft number one can start playing with the books you can get there that this would not include any depreciation expense and the definition of profit for that purpose. The other caveat is that the payments would be phased in – and this has to do predominantly because this is a very capital-intensive program to go into. There will be a lot of money spent up front getting the systems and machines that it calls for a phase-in of the payments – 50 percent would be available in the first year; 75 percent in the second year; and 100 percent after that point in time.

Director Bishop said that another very important point from his perspective was that they did negotiate a moratorium on further expansion of machine gaming. This moratorium is for a period of three years, but has caveats that any change of federal or state law would be available, including any state or federal court decisions.

Director Bishop said that under the "Most Favored Nation" clause, if a tribe wanted to negotiate a different type of machine or more favorable terms than there would be available for all those tribes, there's a requirement that they could make technical changes. He said this is a very important term that they allowed since they're dealing with something that hasn't been built yet. The best planning does not always work out to be what actually happens, so they need that ability. The last mutually agreed upon changes are already in the current Compact that would allow any time the tribe in the state that would like to mutually agree to change something, would be allowed to do so.

Acting-Chairman Forrest called for a recess to allow Director Bishop time to confer with others regarding information that might be needed for the remainder of the meeting.

RECESS

Director Bishop said the Governor met with the leaders of the 12 tribes and there has been

some type of movement on some of the issues of concern regarding the compact. He did not know the specifics of it yet.

Jim Pharris, Assistant Attorney General gave a brief overview of IGRA. He announced that regarding the meeting that was held this morning, he had not been authorized to make an announcement about what was discussed or agreed upon. He said there were people present who had not had a chance to be briefed. There were tribal representatives present and they could make their own choices, but he didn't want to be the one to discuss it. He said his assigned role at these hearings was to explain the history of how they had come to the present moment. Although some may have heard the explanation before, others may not have.

Mr. Pharris said that ten years ago, Congress passed a statute and the idea was to resolve some disputes as to the extent to which Indian tribes could engage in gambling on Indian land. Congress came up with a compromise that attempted to balance federal, state and tribal interests. The compromise depended upon gambling, which is called gaming under the federal law and he would be using the terms interchangeably. This divided gaming into three categories. Indian traditional games and certain social games that were placed in Class I and Congress decided that tribes should be allowed to engage in those games without essentially ending interference from anyone else. The second category, Class II, is essentially bingo and certain other games played in conjunction with bingo. Congress' decision there is that if those games were lawful in the state in which the land was located, then it would be allowed for tribes to engage in Class III gaming. First, they have to approve it themselves through duly enacted tribal ordinance or resolution approved by the Secretary of the Interior. Secondly, according to IGRA, it has to be such gaming as is lawful in the state in which the land is located. And thirdly, there has to be a compact with the state and then it goes on to set a process for how states and tribes would negotiate these compacts and what would happen if they were unable to negotiate. States then got busy on negotiating compacts. Most states, including Washington, did negotiate compacts and as of 1994 and 1995 there are about a dozen. Today there are 20 compacts in place.

Mr. Pharris said there were areas of disagreement. One of those was about the dispute resolution process because what IGRA called for was to authorize tribes to sue the states in federal court claiming either that the states were refusing to negotiate or that they were negotiating in bad faith. Then there was more procedure about what the federal court would find and what would happen when they did make those findings. States had a constitutional concern about that arrangement because the 11th Amendment of the United States Constitution limits those circumstances on which Congress can give the federal courts jurisdiction over states and eventually in a case coming out of the state of Florida, the United States Supreme Court held that Congress had exceeded its authority in IGRA in giving the federal courts jurisdiction over these so-called bad faith lawsuits. This has left IGRA without any clear dispute-resolution process, which is certainly a problem that Congress has so far been unable to address in terms of any new legislation. There was also disagreement over the substance of what was negotiable and this came up in various ways in various states and in Washington it was essentially over machine gambling or gambling devices. Washington gambling law goes back to 1973. Before that, gambling essentially did not exist. It's written in a sort of series of negatives. It says no gambling except a little bit of gambling here and a little bit of gambling there, but not this kind of gambling, but sometimes a little bit there, but not that kind. It's sometimes very hard to figure out exactly what's allowed. Many Washington Statutes must be gone through. Naturally, not everyone reads those alike. Furthermore, there was a question about what IGRA's language of "such gaming" meant because one reading of it was that if a state allowed some form of Class III gaming, that Congress had therefore intended to make all forms of Class III gaming negotiable. That's not a completely unreasonable way to read the Statute and a number of tribes took that position. Some states, on the other hand, felt that if they allowed Blackjack to be played once a year by one club that that's what tribes were allowed to do – play it once a year for one night for one hour if that's the way the state law read. Those gradually have been worked out. The courts rejected

the state's position quite early. Eventually the other issue was resolved, too.

Mr. Pharris said that approximately in 1994 or 95, there were four bad faith lawsuits pending involving the state of Washington with the 11th Amendment issue, it wasn't clear whether they would even find a way to resolve those. The Governor's Office, the Attorney General and a number of tribes met in 1994 and 1995 and agreed on a process. They agreed that they would submit the scope of gaming issue to the federal court and that both the tribes and the state would waive immunity for purposes of this lawsuit, but in return for that they would limit very carefully what they were submitting to the Court and the parties would not be able to expand or add issues.

Mr. Pharris said it took a long time just to figure out whether to do that negotiation but they did do that. They filed actually two cases eventually in the Western and Eastern Districts Federal Court in Washington only the Eastern District case got dismissed. Eventually the other one went forward with about 10 tribes (there were a couple that came in and went out once or twice) and eventually went to summary judgment before Judge Fred Van Sickle in Eastern Washington. Judge Van Sickle issued a summary judgment in September of 1997 in which he said that first of all, that slot machines as he traditionally understood them – and there is no precise legal definition of what a slot machine is – but traditional types of slot machines were prohibited in Washington and therefore were not negotiable in Washington State Compact; therefore, Washington could appropriately refuse to negotiate concerning slot machines. However, he said that the world of gambling devices or machine gambling potentially is larger than slot machines and that there could potentially be machines in which the prohibition didn't apply.

Mr. Pharris said Judge Van Sickle particularly looked at two points of Washington law, one in the lottery Statute which says the lottery can never engage in a game where you are playing against the terminal. Another one in the Gambling Act involving fundraising events by charities and non profits which says that the State Gambling Commission can authorize those charities and non profits to engage in several forms of gambling including lotteries, but then it has an exception. It says: not a lottery, not the operation of a device where a coin or object of value is inserted for the chance to gamble with respect to the device. Essentially what the judge says is there may be gambling devices that don't fall within that prohibition and pursuant to the stipulation that the parties had previously agreed to, remanded it to the tribes and the state to negotiate.

Mr. Pharris said the parties have been doing that since October of 1997. The stipulation called for, in effect, compact negotiations. So that's what they've been conducting – first for several months without a mediator and then for several months with one. In June of 1998, they reached an agreement in principle on what Director Bishop already explained the bases of a type of lottery-based system which lawyers did decide was negotiable under the terms that they could talk about it and that if anyone challenged it, it was defensible in Court.

Acting-Chairman Forrest said that Director Bishop said that state law governed how often the lottery would have their drawings. He wondered if the state Legislature could pass a law that would change this – which was every half-hour – to say every two hours. **Mr. Pharris** said he didn't believe the Legislature could pass anything that targeted only tribal gambling. What the federal law seems to say is, "you don't look to see how frequently it can be played or whether there are limitations on the length or the hours of operation if the game can be played by some person in the state at some time it becomes negotiable and while the state can attempt to negotiate limits, the state and the tribes are not bound by a two hour limit. **Acting-Chairman Forrest** said that he understands that once this is negotiated, it's beyond Legislative control. **Mr. Pharris** said that was correct.

Chairperson McLaughlin said that a player must get three pull tabs or scratch tickets to win. They are similar that way. The Gambling Commission doesn't have the authority to have tribal pull tabs or scratch tickets under their jurisdiction – only the Lottery has that – so that the

difference. **Mr. Pharris** said that scratch tickets and pull tabs are similar. There are some differences, but right now only the Lottery can do the scratch tickets. **Chairperson McLaughlin** said that because the Lottery does that the tribes have the ability to have that within their casino. **Mr. Pharris** said that was correct.

RECESS

Acting Chairman Forrest announced that they were now about to receive the official word on the recent last-minute negotiations.

Director Bishop said the parties have met and have reached an agreement to present amendment to the compact in four areas to the Commission. The areas are to reduce the first-year allocation of machines from 500 to 425 per tribe; the allocation after phase two or in the second year will be reduced from 750 to 675 machines per tribe to add an absolute restriction to a maximum of 1500 machines per facility to the compact and to modify the inter-tribal lottery provision to add that it would require not only the approval of the State Gambling Commission but also the Governor before it could occur.

Chairperson McLaughlin asked if the intertribal would be part of a compact amendment which work that way anyway. **Director Bishop** said the compact says it could be approved only by coming before the Commission. Now it is technically the same as a compact amendment, except they would not have to go through the timeframes, submitting it to the Legislature or anything else. It still would have to come before the Commission and they would have to agree to submit it to the Governor for his approval. He would have the final approval authority.

Senator Schow asked if casino "A" wanted to lease 300 machines from a neighboring tribe, would the Governor have to approve that. **Director Bishop** said no, that would be strictly between the tribes themselves if they want to lease or sell their allocation, but they couldn't have more than 1500 total. In other words, a tribe could lease their rights to their total 675 if they so wished.

Acting-Chairman Forrest said the Commission has a rather formal and technical series of procedures to present amendments of tribal compacts and he didn't know whether it contemplated that after it is has been transmitted to the Legislature and to the Commission and all those matters that it is possible to then have an amendment and that the Commission would then tomorrow act in final fashion. It would at least occur to him that the more technically-correct procedure would be to refuse to accept the compact in its present form, return it for negotiations and negotiations in fact have been conducted and resubmit it. But if the attorney general wants to express an opinion about whether in fact an amendment after it has once been formally submitted is in order, he would be glad. . .

Chairperson McLaughlin asked if in Acting-Chairman Forrest's question would it also be proper to accept the amended form that's being offered to the Commission now and send it to the Governor with those amendments. **Mr. Pharris** said they have had a little more than an hour to consider this issue, but his advice is that the statutory process – and this is by analogy to rulemaking – an agency can propose rules and it can, at public hearings, propose amendments and, as long as those are not amendments that completely change the scope of the rule, they can go ahead and adopt those and they don't have to go through this endless reiteration of new hearings and new public notice and he thinks that much the same would apply here and that is amendments of this type which are small in scope, which reflect in virtually every case the concerns expressed by the state side which are not going to be a surprise, are not going to open up a new issue to the public, he is comfortable advising that those can simply be incorporated into the compacts as its submitted so they don't have to start that statutory 45-day clock again with new Legislative hearing and so forth. On something that's really not a surprise, not a change in the scope of the compacts – just a change in some of the details.

Senator Schow asked if it is his opinion that the Legislature can be by-passed. He wondered if that were a good precedent to be setting because the Statute says that there shall be a legislative hearing on these. **Chairperson McLaughlin** interjected that the Statute doesn't say "shall" but it says "may." **Mr. Pharris** said that a legislative hearing is required by the Statute. He emphasized that it has to do with the nature of the amendments. If the amendments were to significantly change the whole scope; for example, if the agreement this morning would have been to drop all these and go for old fashioned slot machines, and suddenly those pop up surprisingly today, he said he thought he would be giving different advice. **Senator Schow** said his concern is that someone is making a decision that this is simple so the Legislature doesn't have to be involved. He wondered at what point it should be said that the Legislature needs to be involved and who makes that decision? **Mr. Pharris** said he didn't know who would definitely make the decision in other hard cases, but he thought this one was safely on the side of the line where this is within the discussion that's been going on. It doesn't substantially change the scope. It would be within the comment that the Legislature might make. It doesn't change the scope of the compacts in any significant way.

Senator Prentice said that Committee week for the Legislature is in December and she would anticipate a possible presentation of the changes that have occurred. **Senator Schow** said he was not so concerned about that, but he worries about the precedent they may be setting that thinks the Legislature is supposed to have a part in all of a sudden they are saying this is very minor so the legislative process can be by-passed. **Mr. Pharris** said he understands the concern, but on the other hand, he thinks the Commission is safe with this particular one in not going through the 45-day process. **Chairperson McLaughlin** said that would be because it was lesser in scope than it was originally. **Mr. Pharris** agreed that that would be a significant part of it. **Chairperson McLaughlin** asked Jon McCoy if he agreed with that.

Mr. McCoy said if he had been asked the question directly, he would have given basically the same response that **Mr. Pharris** gave in that if the question was "Is this a substantial change?" He would say "No, it's not," and therefore those kinds of amendments can be made in fact. In terms of precedent, the Commission has made technical amendments to compacts at the time of presentation. With regard to technical issues, he could think of a couple that were done that way at the time of the final hearing that some issue came up that had not been resolved by the parties and they have had to confer and make those changes before it was adopted by the Commission and sent to the Governor. So that would not be precedent-setting in that sense.

Chairperson McLaughlin asked if this had been negotiated more machines or a definite change, would he say that, "Yes, we have to start the clock again?" **Mr. McCoy** said that in that case the answer would be yes. This might be an issue that is not of concern to the public.

Commissioner Forrest called for Ron Allen to be the first speaker.

PUBLIC TESTIMONY

Chairman Ron Allen, from the Jamestown S'Klallam Tribe, said this issue has been one of great frustration between the tribes and state for the last four-plus years. However, they have found a middle ground over the concerns and authorities and the kinds of games that should be allowed in Washington State for tribal governments. IGRA was passed to provide the tribes the opportunity to engage in gaming, to generate revenues for the various reasons stated previously. The conditions the Governor was imposing they believe with regard to his concern over the control over the industry because he truly does want to make sure this industry is controlled in Washington State. Tribes concur with that and they appreciate the fact that he respects them as governments and that they have governmental responsibilities.

Chairman Allen said that the tribes agreed to conditions that would provide even more restrictive conditions than what they would normally require or think are reasonable, but they believe that there are definitely reasonable compromises to basically begin the process and see how it looks when they engage in this opportunity for each tribe. The Commission know what the games are like between the tribes in the rural area versus the tribes that are in the urban settings – it's a different ballgame. But, that's just the luck of the draw, so to speak and the fact of life is that they have a greater opportunity, they have a better market and they want to make sure those tribes have full opportunities to engage in their market that they will be able to access. The tribes don't want to see these resources beleaguered and delayed unnecessarily. The four years they have negotiated is long enough and it needs to be brought forward.

Chairman Allen said he would argue that the Commission should look at this very favorably because the tribes have argued nationally (he is the president of the National Congress of Indians and he deals with national politics at all levels throughout the United States) and he thinks that Washington State can show a good example of how tribal-state relationships can work with regard to gaming. He said they don't want to go down the road like California did in [? 5] where they had to out and go after another initiative and spend a lot of money in that agenda – it's wasted money. Here they can show a good compromise and a good way to do business. He says they support the proposal; they think it's a reasonable approach; it's very conservative; it has provided a lot of give-and-take on both sides and he thinks that it is one that really meets the needs of the tribal governments in their communities as well as the state with regard to its concern over gaming in Washington state.

Chairman Stan Jones, from the Tulalip Tribe of Indians, said he thinks they have come to an agreement that is a win-win for the tribes and for the state of Washington. In 1982 the tribes started with bingo in this state and they now conduct traditional bingo and pull tabs as well currently using more modern forms of bingo-type games in electronic mode. The bingo operation was joined in 1982 with Class III gaming and that the funds from that would go into the governmental operations and services for the tribe. The compact was amended under both Governor Gardner and Governor Mike Lowry.

Chairman Jones said right now there are 800 people are employed by their casino and they have a full health plan for all their employees and are looking toward full health care for all their tribal members. The gaming employee payroll is approximately \$19 million and the services that they contribute to the adjoining community is about \$3 million. There are no businesses on the reservations, so use their money to buy from outside communities. There is support for this amendment from the Snohomish County Sheriff and the City of Marysville and he has five letters to present to the Commission showing support. The partnership between the tribes was foreseen by former U. S. Senator Daniel Evans when he remarked upon the execution of the Tulalip State Compact that it was a model that Congress had hoped for with the passage of the Indian Gaming Regulatory Act.

Chairman Jones said they believe that the statement of policy and purpose to their compact where in the state sought to restrain all persons from seeking personal profit from professional gaming. There is no personal profit. Everything goes into the programs and they believe to a great extent that compact policy and purpose of the Tulalip Tribes to exercise and to retain and to regulate gaming activities upon the land for the purpose of encouraging tribal employment, economic and social development and funding of tribal services while ensuring fair operation of gaming and prevention of corruption. He said that the **Everett Herald** newspaper pointed out that the Tulalip Casino is one of the best run in the state.

Chairman Jones said the proposal today is to settle the Chehalis litigation and amend the tribal compacts including Tulalips, authorizing the implementation and play of tribal government-run lottery systems. This is an opportunity to once again further the mutual policy and purpose of their compact relationship. He does not want the Commission to allow this to slip away with unknown and perhaps unintended and unwanted results. He said negotiations have been going

on for the last year and they had a federal judge toward the end in mediation. They have invented the agreement being discussed today and it has been carefully thought through. The Governor was not quite satisfied with the numbers and certain things and they met with him and came to a win-win agreement with him.

Commissioner Forrest welcomed Commissioner Ludwig to the meeting at this time.

Chairperson McLaughlin said during the presentation by Director Bishop, she had asked the question why the 2 percent didn't include pull tabs and he had made a comment that the former executive director of the Gambling Commission negotiated those compact. She said as she talked with him during the break and he informed her that pull tabs, bingo come under Phase 2 which the Commission does not regulate and Keno came in later after they did the 2 percent of the table games, so that was the answer.

Dennis Halliday, said he is from the Muckleshoot Tribe and he hopes that the agreement will be approved so he can go to a good college and get a good job.

Virginia Cross, Vice Chairman of the Muckleshoot Tribe, said the tribes met and negotiated many times over many months. They support the agreement. The benefits to the tribe of the gambling money is funding for the senior citizens program, youth and recreation programs, they give about \$300,000 to the Indian education program with the Auburn School District. They have improved new housing for most of the tribal members. They have full college benefits for students who want to attend college and the pow wow that's held in August. They give shoes and coats for children: from birth to 3, Headstart preschool, and then kindergarten through Grade 12. They provide social services. The 2 percent money is given to the City of Auburn, King County Fire District, and King County Sheriffs. Following are a few organizations who benefit from their charity table donations. They give to the UGN, the Washington State Indian Day Celebration that was held in Puyallup a week ago, the Lions Club, the Auburn school lunch fund, the Auburn basketball booster club, the Helping Hands of Enumclaw and the Enumclaw Parks and Recreation. She urged the Commission to support the amendment

Dawn Vyvyan said she didn't want to testify, she just wanted to say she is for the passage of the amendment.

Senator Schow wanted to know if any of the machines would be dedicated to charity. **Director Bishop** said they would not. **Chairperson McLaughlin** said the tribes could do it if they wished. **Director Bishop** said he would welcome them doing that if they wished.

Emile Bourgoyne of Oasis Technologies, Omaha, Nebraska. He said they were overall supportive of the language of the proposed compact amendments and consider it to be a viable solution to Class III gaming here in the state of Washington. He said that contrary to some beliefs, the technology contained in the amendments does exist. They've had the technology for over five years and those type of devices have been in place for some period of time now. They currently operate an electronic scratch lottery system in the UK in South America and are currently under negotiations for several state lotteries for very similar systems, so it is not devices that have not been created yet.

Mr. Bourgoyne said Oasis has some technical concerns and they submitted some written comments. He pointed out that in those comments, it deals with game creation and system configuration. The proposed language of the compact amendments contemplates the creation of electronic scratch ticket game set all in demand by a manufacturing computer residing in the tribal gaming facility based on a template created in accordance with specific terms. He said it was their impression that the underlying principle of the Chehalis decision was to permit lottery games lawful under existing state laws. The methodology employed in the creation and delivery of electronic scratch ticket games should conform as much as possible to those used in

Washington State scratch-off lottery system games. Just like the existing scratch-ticket manufactures that the state uses for their paper games, they create their games at their home office in Omaha and then they download them based on the clients' wishes, pay-outs, the themes of the games. They download them through a state of the art encryption service which would be prohibited under the existing language if their game center had to be located within the tribal gaming facility. He said they didn't feel Oasis should be penalized for employing a method of game-creation and delivery more in conformance to what the state uses for its scratch system today and Oasis cautions the Commission that if it allows the creation of a game set in the manufacturing computer on demand from a template, they are essentially permitting the regeneration of such games over and over again making this seamless process more akin to games created on demand as a video system and they would caution them to reconsider some of that language or at least to lock out the method that Oasis employs which is more similar to the way the lottery handles its paper scratch systems.

Chairperson McLaughlin asked if Oasis could not develop something that was done within the casino. **Mr. Bourgoyne** said they feel they could, but what they do is more closely related to what the state currently has with its lottery system and paper scratch systems and they should not be penalized. He said Pollard bank note or Scientific Games or whoever they have their scratch off lottery contract with creates the games at their location and they ship the games via trucks to Washington lotteries for dispensing to their retail outlets. They are proposing a similar system where they create the games at their home office, download them through a state-of-the-art encryption service approved by [your] lab to get to the gaming facility which is the only difference. **Chairperson McLaughlin** said she doesn't understand the technicalities, and so she didn't know whether it was good, bad, or what and withdrew her question.

Commissioner Ludwig said he had a chance to read of the vice president on his way over and there were many practical suggestions. He asked if he had discussed any of this with Commission staff prior to the November 2 memo. **Mr. Bourgoyne** said he could ask Director Bishop if he had had any discussions. He said that as soon as they were given the compact language, they immediately prepared their written comments and they submitted it in a timely fashion to the Commission and they have the complete comments on that. **Director Bishop** said that Mr. Adams talked briefly to Ed Fleisher the deputy director. He said they did not discuss anything in depth. He said he mentioned his concerns. From a practical perspective, there was no intent to exclude anyone from this process. In his testimony or briefing, he spoke of technical changes that would make a system better or add integrity to it. He welcomed anyone to come forward and he was sure the tribes would as well anyone who would offer such a thing. While the compact calls for certain provisions, it also allows the flexibility to change those provisions should a new way of doing this could come forward.

Leah Moccardine said she is not here to testify for any tribe. She said she is here as an individual and as a native person she hopes that amendments such as these are limited because she doesn't think tribes should be restricted in their governance. Her questions were directed to the tribal leaders because they concern her. Her concern is the moratorium on section 15 of the appendix which puts a three-year moratorium on tribes of seeking amendments. Also, the dispute resolution isn't consistent. Her other question is, where is this computer system going to be located and who would have control of the output of that system.

Devoreaux Old Elk said he is in favor of the proposal.

John McCoy said he would only be reiterating the chairman and vice chairman of the Tulalip Tribes in their support of this proposal.

Ross K. Sockzehigh said he is vice chairman of the Yakama Nation Tribal Council. He said the Yakama Nation opened a Class III gaming operation on May 15, 1998 known as the Yakama Nation Legends Casino. The surrounding community is primarily rural and agricultural and there

is very little light industry. The annual average unemployment rate in the surrounding area is 10 percent, which is the highest in the state of Washington. However, on the reservation, the unemployment rate is 80 percent. There are approximately 6,000 tribal members residing on the Yakama Reservation. With an unemployment rate that high on the reservation, any opportunity to provide employment is welcomed. Although the Yakama Nations Legends Casino is not a cure-all for their unemployment problems it has had an enormous, which is spent in the local community, plus 90 percent of the goods and services are purchased locally. The casino has given tribal members the opportunity to learn new employment skills and receive training to enhance their job marketability. They've also taken individuals off the welfare rolls and has instilled confidence and self respect.

Chairman Bennie Armstrong, of the Suquamish Tribe I'd like to say that our tribe [?] employer of Kitsap County [?] 40 tribal members 260 non tribal members [?] no charge to the government. If the Commission approves the compact amendment then the Suquamish Tribe will also endorse it even though it is not what they would hope to obtain after they spent so many years. They hope the Commission appreciates the degree of sacrifice and compromise made by both sides of the negotiating table this past year and that the final document represents a very fragile balance of both interests. The Commission's approval of this compact agreement will assure him and the tribal government that he represents that Washington State government has the integrity to at least meet the negotiation process in good faith. He asked the Commission to fully and unanimously approve the compact amendment.

Acting-Chairman Forrest called for any other speakers who might wish to speak.

John Halliday of the Muckleshoot Tribe and a member and vice chairman of the Gaming Commission and the director of economic development for the Tribe. He said he was here speaking as an individual, not as a representative of the tribal council. He said he is a product of what the tribes have done with their gaming revenues. When he was in school just finishing his undergraduate work, the federal government pulled out funding for Indian students in higher education and that was just when the Tribe's bingo hall and their casino was opening and the Tribe kicked in and said they would fund him. He was a single parent with three children who earned his master's degree in economics because he wondered why they were having so many problems in Indian country economies. He found that there were three keys in all of the world that have to do with economics: investment, stable government, and an effective workforce. In particular, this agreement symbolizes the stability in the business environment that both the tribes and the state can benefit from because the tribes are an integral part of the economy of the state and they like to contribute and those dollars flow on and off the reservation. He said he hoped it will benefit the Indian people in the long run and their relationships with the non Indians. He said this was an era of new beginnings. He said he hoped his son would be able to learn from this and be able to move forward and progress and all of the tribes and the non Indians, too.

Senator Prentice pointed out that the Muckleshoot Tribe is the second largest employer in that area, the first being Boeing. She said when she visited the reservation before the time of the casino, she remembered being impressed with the efforts they were making at preserving the language and programs they had within the schools and the efforts to consolidate the land. So far, she said it had turned out very positively.

Acting-Chairman Forrest said he appreciates the input from the public.

Chairman Mel Youchton, of the Chehalis Tribe, thanked those who worked on the agreement and said they went in debt to build the casinos and some of them work hard just to break even. He said his tribe was the second or third largest employer in Thurston County. He said they have 475 employees, 75 of whom are Native Americans so they help the entire community and county. They bridge the gap between the county and state agencies where they are beneficial to all. He would like to see the agreement expedited.

Commissioner Forrest said the meeting would reconvene at 1:30 this afternoon and invited everyone to attend this afternoon where the technical experts will educate the Commission on the actual detailed mechanics. He said it's been a pleasure to have the sense of cooperation and goodwill and the thoughtful comments and observation of time limits and made his job pleasant and easy. He adjourned the meeting.

LUNCH BREAK

Chairperson McLaughlin reconvened the meeting at 1:30 p.m. She introduced the head table.

Acting-Chairman Forrest reminded the audience that experts would be making their presentations. At the conclusion of that, if time, he would take further public comment. He asked Director Bishop to introduce the presenters.

Director Bishop said they would be giving demonstrations of two machines that are currently being operated in the state. One is authorized for their licensees – the Gold Crown. The other one that is being currently operated in several tribal casinos from the Infinity Group. The third one in the middle is one that is illegal in this state – a slot machine – in fact this is one that the Gambling staff picked up in a raid and has been turned over to them by the Court so he assumed it was illegal. After that, there would be a demonstration by Mr. Robert Sertell, who is a recognized expert in slot machines. He is chairman of Casino Horizons Corporation; he has over 40 years experience dealing with gambling machines; his company is predominantly involved in doing expert testimony as well as training law enforcement casino staff members and regulators. After him, Mr. James Maida, who is the president of GLI and is a worldwide recognized expert in electronic based gaming. He has provided a resume. Demonstrating the machines will be Randee Kerns who is regulatory compliance person for Infinity Group. Randy Jansen, who is a field service technician will demonstrate the Gold Crown. Also present are Tim Brown, Planning and Research Manager of the State Lottery and Mary Jane Ferguson is Legal Services Manager for the State Lottery and they will be available to answer any questions.

Randee Kerns, regulatory compliance coordinator for Infinity Group out of Albuquerque, New Mexico. Infinity's product is called the Tab Force pull tab validation system. Tab Force works with a standard pull tab. The one they are using in the market at this time is a numeral ticket, which means it has number symbols inside. There are currently 20 plays grouped into one ticket. He opened one to pass around through the audience. Each group of symbols on there – nine symbols represents one play the same as a three-window break-open pull tab and each group of symbols that has a box around it is a winning play. The system is engineered so that a player is buying this pull tab from a cashier or a floor worker, very much the same as pull tabs are sold in the market at this time like out of a fish bowl. When the player buys the pull tab and opens it up, the game is over.

Mr. Kerns said that basically, everything that they're going to win or lose is already predetermined. Each group of pull tabs is 5,000 cards in a deal which is an individual game. The player opens up the pull tab, they look at it, they're able to look at the information that's printed on the back side that tells them what the winning combinations are and determine whether they've won or lost. The player then has two options. They either take the pull tab and go up to a cashiering point where the pull tab is read by a cashier. There is a Local Area Network that operates off of a PC computer in each facility that utilizes Tab Force. All the terminals are tied into that computer system. They all operate only with the information from the computer. When a pull tab deal is sold to the facility, the information to be able to decode the bar code which is located on the inside of the pull tab is also placed into the system. That bar code information is either read by the cashier, the pull tab is validated, the data is taken out of the file so the pull tab will not be paid or played again, and the payer receives a voucher that tells them how much they're going to receive for it.

Mr. Kerns said that each voucher also has a uniquely-generated bar code on it which he also passed around for observation. When that voucher is paid, that is also canceled out of the system to prevent duplicate play. The other option for the player after they have opened their pull tab is they can take it and insert it into one of the player validation terminals located on the floor. The player inserts the pull tab into the system, the system reads and validates it, it indicates that there are the 20 individual plays which are on the card which are going to be displayed for the player. The player then presses a button and they're allowed to look at each individual separate play so they can see what they've won. On this one – it's called Gaming – he didn't win anything. On this one, two cherries and a seven – those relate to the numerals of 1,1 and 7 and based on that, this particular individual winning pay line was 10 cents. It then records the pay line and carries the total forward. The player then continues to validate their pull tabs. The system allows for all pull tabs being sold on the premises that have been activated into the computer system to be played in any of the terminals that are onsite.

Mr. Kerns said the terminals have different themes so that the players, if they happen to like a sevens theme they can play it. There are also four other different themes that convert the numerals to play information for them. The only thing this system is doing is reading the information that's preprinted on this card and then displaying for the player and validating that winner so it can't be played again. He said there was another mode which allows the player to rapidly spin through the individual plays to validate the pull tab. Sometimes like in bingo games in other states where they have their machines, it can get down to the last minute and they need to close out the session or they need to move on and go back and play bingo again. The system then generates the receipt. He read the receipt as \$2.25 and it contains all of the information required to be recorded: name, address.

Senator Schow asked [inaudible] **Mr. Kerns** said that was correct and explained that the player could [or could not?? Tape is going on and off periodically and I'm missing words] open it up and determine the winning value by looking at the back of the ticket [inaudible] by opening up the ticket and looking at the boxes the play is contained within the boxes and they then turn it over and lay it next to the play information on the back and determine for themselves if there's a winner. He said there was also in their current upcoming production pull tabs a new system that they're putting on that's called Tab Tally that's part of the secondary winner verification system that will have a scratch-off latex box that if a player or the operator scratches off that box it will tell them the total value of all the winners on the ticket. He reiterated that that was an upgrade to their current program.

Senator Schow said that to validate it it either has to go through the cashier or the machine. **Mr. Kerns** said that was correct for security purposes.

Director Bishop asked how hard it would be to convert an electronic to a stand-alone gambling device. **Mr. Kerns** said that anything could be converted into any type of device. A pac man game could be converted into a gaming device. All that has to be done is to change trays and change information. He said his machine contains an electronic barcode reader. It's a fixed version of this just like a scanner at a grocery store. It's reading the barcode information, the ticket goes in there, it's deposited down through the bottom of the case into a secure storage location as it's validated and it contains a printer that creates the receipt and in this case a backup receipt which is maintained on a separate roll. So there is a dual function for internal controls. **Director Bishop** said this machine could, in theory, be converted into the type of device allowed by the proposed tribal lottery. **Mr. Kerns** said it could. **Director Bishop** said it has a computer, a barcode reader added to that, and a printer. **Chairperson McLaughlin** asked if it could all be done within the casino. **Mr. Kerns** said it was currently done within the casino and there is no reason the system could not be upgraded to function in the manner that they are discussing for the electronic gaming agreement.

Senator Schow said this would mean that the casinos that have these machines, rather than buy new machines could convert the machines they have. **Mr. Kerns** said it could be done. **Senator Schow** said this could be quite a savings to them over buying because these machines will probably become obsolete with the new ones. **Mr. Kerns** said they may become obsolete to some degree, but not totally obsolete. **Chairperson McLaughlin** said that when she found out that the Commission didn't regulate these machines she decided to play one at Tulalip and the lady next to her said, "Don't use that machine; it's no good." **Mr. Kerns** said players adopt machines just like they adopt pull tab fish tanks and his company's device was reviewed by the National Indian Gaming Commission in February, 1998 and in June of 1998 they issued a written opinion that it is a technological aid to the Class II game of pull tabs and as such, not a Johnson Act device. **Commissioner Herbold** asked if this machine can be converted into a machine that is currently considered illegal in the state of Washington. **Mr. Kerns** reiterated his original statement that even a Pac Man game can be converted into something that's illegal by changing parts.

Senator Schow said these machines are not Class III, but Class II and the Gambling Commission doesn't regulate them. He wondered if these same machines could go into restaurants. **Director Bishop** said it would take some technical changes. There are some rules that would have to be changed, but other than that it meets the definition of pull tab in the general sense. **Senator Schow** asked if there were some machines that dispense pull tabs now. **Director Bishop** said that was a good lead-in to the next demonstration. **Chairperson McLaughlin** said she thought the pull tab readers that are in licensed place are under the Gambling Commission's regulation. **Director Bishop** said the next machine that will be demonstrated is a machine that has been approved by the Commission about a year and a half ago and it actually dispenses the pull tab, where this one does not dispense the pull tab. It is a reader in the true sense in that the player has to be somewhere else to get the pull tab to insert in it.

Commissioner Heavey said that, in a normal pull tab game, the operator can control to some degree their win and loss ratio by pulling the game or by leaving it in play. He wondered if that were done with this machine or if they sell all of the tickets for a packet or if it comes in a packet, or how it would compare in those terms to what is done with a manual pull tab operation. **Mr. Kerns** said it was done virtually all of the time in all of the locations where the Tab Force is being utilized which is most of the compacted tribal facilities in the state of Washington, bingo halls in the state of California, bingo halls and fraternal organizations under license with the state of Colorado and tribal markets in Oklahoma and Texas at this time. They play them completely out. There're 5,000 individual cards in a deal which comes in one box. That is one complete deal and they play all the way through it, so there is very little paper waste. **Commissioner Heavey** said there could be a circumstance where in the first 2,500 tickets, all the major prizes are gone and then there's no way for a person to come out on the last 2,500 tickets. **Mr. Kerns** said that if this machine were ever legalized for use in the state of Washington and if Infinity were to be working with the Commission on that end, they have been working on the licensing process with the staff and they could pull them.

Director Bishop said the one big difference is that the tribes do not have flares and mark off those big winners. He said he thought it would operate different in the licensee's arena because they still would have to mark those off and the players would know that they were gone whereas they don't here. **Commissioner Heavey** asked how that could be done from a practical standpoint. The player could only have one set in play at one time. **Mr. Kerns** said most of the locations utilize multiple series. Currently, there are three different denominations of the ticket with 20 plays on each ticket. A green ticket is \$5, that's 20 plays at 25 cents; the orange ticket is \$10, that's 20 plays at 50 cents; the purple ticket is \$1 per play, 20 plays for \$20. A player can have multiple series in play at a given time. **Commissioner Heavey** said he understood that, but if they are being marked off on a flare, from a practical standpoint, the player couldn't very well do that. **Mr. Kerns** said the player would have to have a separate flare for each game that's up, just

the same as now and the player would probably talk about posting them at a cashiering point for everybody to go look, and as the vouchers were redeemed, it contains the information on the winners that have been validated and that would be their mark-off time, in his mind. **Director Bishop** said that, in a practical sense, the flares would need to be posted where the player purchased the tickets. **Commissioner Heavey** said if there were 10 machines like this, there would be 500 tickets per machine and theoretically a player could have out, somebody could come up with 10 machines [by buy?] half the value on those 10 machines and all those played before they know [what that?] the prizes are gone. **Mr. Kerns** said the other solution to that is to build an electronic flare into system that the player can look at and it would automatically mark off. That is an option, so before they even sit down and play, they could look at that and have a backup of the paper flare at the cashiering point. **Commissioner Heavey** asked if the player didn't open it, could take it back. **Mr. Kerns** said that would be up to the rules of the Commission. **Commissioner Heavey** said he was asking a theoretical question. **Mr. Kerns** said they could do that now with any pull tab. **Commissioner Heavey** asked if they opened it and they put it in, then at that point, they would know what prizes were still out. But not until they opened it and put their tab in. **Mr. Kerns** said it could be set up to operate either way. What they are discussing is just minor programming adjustment to however the Commission's choice would be.

Senator Schow asked if the casino operator could, at any given time, go into that computer and find out, out of the 4,000, how many big winners have been hit, how many big winners are still in there to tell them when to pull the game or not. Because to pull the game here, what they would be doing is just to say "Bring all the green cards back; don't sell anymore of them and the game will be changed and there will be a new one." **Mr. Kerns** said there is a complete reporting function that works with the whole system that will tell them anything that system has done. **Senator Schow** said if there were three big prizes on a particular game and 4,000 tickets available, if 3,000 tickets had been bought and no big prize hit, the operator would know that on this one they were ahead of the normal percentage, and then they could shut that game down and put a new one in there. **Mr. Kerns** said that could be done.

Randy Jansen, Bingo King who is a field service technician for the Gold Crown machine, said this machine is a stand-alone pull tab dispenser or verifier. The player can put anywhere from \$1 to \$20 in the machine and it will read the ticket. If there were a problem reading the ticket it could always be opened up. Most people trust the machine after the first few, but they're welcome to open up every single one they want. He said these are similar to the standard five tab pull tab. As the pull tab runs through the machine there are barcode windows that are opened. Just like any other pull tab they put a strike through the middle of winning tickets as it does visually on the machine. He showed a couple of examples of winning tickets. He said the dispenser itself holds 5,000 tickets physically. The whole game is controlled by one set. Each machine is unique. They will have different sets in different games. Currently, the number of games is four. There are two more games coming out. This has only been available since about late June, so it is a fairly new product. This available to all state licensees as well as tribals. **Commissioner Heavey** asked how many of these machines are in play. **Mr. Jansen** said there were about 80. **Commissioner Heavey** asked if they were placed on lease or purchase. **Mr. Jansen** said there were different financing plans.

Chairperson McLaughlin asked how much they cost. **Mr. Jansen** said they were roughly \$8,200. **Chairperson McLaughlin** asked if it could be changed over the same as they had been discussing previously. **Mr. Jansen** said he had not heard the discussion and was not qualified to discuss physically or electronically what the needs of this other machine is. **Director Bishop** asked if it had a computer inside. **Mr. Jansen** said yes it did, but it is a stand-alone device. **Commissioner Forrest** asked if Mr. Jansen's machine and the machine that had been introduced earlier were direct competitors for the public's interest and attention or if there were some significant difference that the public should be aware of or is aware of. **Mr. Jansen** said in one way the public is more aware of the game set itself. This is a set number of tickets; there's a

set number of winners; and visually they can see if this game is up or down. Apparently, they play these sets out completely and it is his impression that the person buying the ticket really has no idea how many winners have come out of that set. **Commissioners Heavey** asked if each machine had a series. **Mr. Jansen** said yes. **Commissioner Heavey** asked if each machine had its own individual series. **Mr. Jansen** said yes. In pull tabs it is required that the series number that can be tracked. In the back of the ticket there is a number on the top that is unique for this set of tickets. **Commissioner Heavey** asked if it were just a cartridge that the player inserts. **Mr. Jansen** said there was a software key that comes with every single deal or set and on the inside of the machine they are required to destroy the software of the previous game and they'll load this key in and the number will be reflected on the bottom of the screen that will be identical to the flare shown and this flare must be maintained. They can't just rely on the software flare shown. **Director Bishop** suggested that he open the machine so the Commissioners could see how the tickets are in it. **Senator Schow** said this machine did not dispense cash, just a ticket to show the player what the winnings are. **Mr. Jansen** said that was correct. Under Class 2 gaming a player cannot build up credits nor give out cash, so just like any other pull tab game that's in a bowl, they are required to bring the tickets to attendant and then the attendant comes and marks off the prizes at the appropriate values which is somewhere around \$20 and above. **Senator Schow** said a player could not play the credits with this. **Mr. Jansen** said no they could not. **Senator Schow** said if the player put a ticket in and won \$100 they would have to cash that slip in to get \$100 and then put that money back in the machine if they wanted to continue playing. **Mr. Jansen** said if he understood him to say it doesn't put credits on the machine. The only credits here are what the player puts as far as money in the machine. **Director Bishop** said this machine does not accept the ticket back in. If the player takes the actual ticket itself up to get paid. **Mr. Jansen** said that was correct and there has been steps that even somebody who can get in the machine can't reintroduce that ticket through the machine again. It will virtually eat that ticket as it tries to look for a window, the window is gone and it will tear up that ticket. **Senator Schow** said that the slip that comes out showing a player what he has won must go to the cashier. **Mr. Jansen** said it was actually the pull tab itself. He said any winning pull tab will have a [stripe or strike??] through the middle as it is opened it. **Director Bishop** suggested that **Mr. Jansen** play it a couple of times before it is opened so the Commissioners could get a flavor for what's going on. **Mr. Jansen** said that in this case, the money has already been put in the machine. It says "dispense pull tab", and a person will hit the green button and the actual dispenser will come down the chute and be open just before being read. It's a barcord reader, he pointed out the barcode skanner, and just before existing the machine he pointed to the spot where it will be dispensed into the tray and it will be read at the very last second and it's going through the machine. He then executed the demonstration. At this point it has read the ticket, it looks kind of like the front of the ticket with no windows opened. The yellow buttons the person then by opening pull tabs they can open one window at a time and visually see the pull tab there about to go. They also have an open all button so it can strip them off one after another. The machine makes a lot bells and windows and the ticket produces \$1. The machine can be set to lock up on any tier, but it gives some bells and whistles and the volume is adjustable depending upon background noise of the establishment. It did not display that there was a winning ticket until visually they were all opened and it also puts a little winner arrow to correspond to what the player has won. He showed the winning ticket with a red bar through it and the dollar amount on the ticket itself also.

An unidentified speaker asked if he opened [them?] one by one it would show that it was a winner. **Mr. Jansen** said that was correct. He said if the player just opens the first window, it would wait until the player had opened all the windows until it tells the player that it's a winning ticket and the player must visually open it on the screen to go onto the next ticket. The player can't just have it dispense and not visually show. **Director Bishop** pointed out that to get the \$1 the player would have to take that ticket out, open it up and take it up to a cashier to get paid. He said it would be somewhat similar to the display that they would be talking about in the fact that the player will get a ticket of some sort displayed and the player will have to punch or touch something to get that uncovered in the scratch ticket lotto.

Mr. Jansen said his company has developed its own barcode system so this can't be read by other computers or barcode readers. This is proprietary barcode as well as barcode reader. Everything else is unreadable to this reader and their barcode is unreadable to everyone else.

Commissioner Ludwig asked if this were commonly done in the industry. Mr. Jansen said he was not familiar with what his competitor's machines do.

Commissioner Forrest thanked Mr. Jansen and said they might wish to speak to him again later.

Robert Sertell, chairman of Casino Horizons, Inc. of New Jersey, said his company provides technical services to the gaming industry. They have trained approximately 18 different state police organizations, they trained a unit of the FBI, the Royal Canadian Mounted Police, and personally this is his almost 43rd year in this business. He said the machine in the center is a traditional Las Vegas-style slot machine which has been impounded and is illegal in the state of Washington and it is important that they understand how it functions so that they can then compare the proposed machine against this to see where they differ. This particular machine is a standard Bally??, which are run by a 200 position DC [Stepper??] motor. The motor is capable of stopping each reel at any one of 200 different positions around a 360 circle. It's actually too accurate for use in slot machines. They have to dumb it down a little bit because the customer can discern the difference between 200 different positions. That particular machine displays 22 symbols to the gaming public. If a player stands in front of the machine and watch the reels as they spin, if they were to spin slow enough – which they do not – but if they were to spin slow enough and the player were able to count them, they would be able to count 22 different things around the reel. However, what the player sees is not what he or she gets. That machine employs virtual reel technology which is the current state-of-the-art in that industry. It employs a variety of what is referred to as the Telemace [sp?] Patent and Mr. [Ingy Telemace?] in 1984 was awarded a patent on a process which allows a slot machine to display physical symbols to the gaming public and yet to have an invisible virtual reel spinning in space containing lots more symbols than can be seen. The computer sees them, but the public does not, so that while the average player who looks at that machine and wants to do a little arithmetic can multiply their odds 22 symbols on the first reels times 22 on the second reel times 22 on the third reel, 22 to the third power is 10,648. So that if there were one jackpot symbol on the first reel 17 for example, and one more on the second reel and one more on the third reel, $1 \times 1 \times 1 = 1$, so that the odds of winning the big prize ostensibly would be 10,648 to 1. If what one sees is truly what one gets. But that's not so. The designers of these caliber machines are able to incorporate as many virtual symbols electronically as they care to do, so that if a player walks into a casino in Las Vegas and looks in the glass and counts 22 symbols, there is no way to tell how many are really in the computer. Currently, several hundred symbols per reel are possible. Any number is technically possible, but the odds of a mathematical cycle instead of being 10,000+ handle pulls, could be billions to one and the player would have no way to tell. That's why regulator bodies such as the Gambling Commission find it very important to regulate what goes on inside those machines. The mathematical information from the factory that designed the computer is essential.

Senator Schow said the old type of slot machine just had balance wheels and the odds were computed by the symbols. There was no technology that could stop. **Mr. Sertell** said the older-style machines, what could be seen was what was delivered unless it has been adjusted. It was possible with the old-style technology to adjust things. A nut and bolt were added to ensure that a machine would never stop on a particular combination. Generally what was done in the industry was to cut a lemon from another machine's reel strip and paste it over the jackpot symbol on the machine that had been adjusted so that in the old-style casino, if the customer said "I got a lemon," it caused trouble because they knew it would never arrive that way.

Mr. Sertell said the proposed machine for the tribal lottery system differs from the traditional slot machines in many important ways. With a slot machine, it arrives at a winning or losing decision by and within the machine itself. When the player walks up to the machine, he or she is truly engaging that machine in a contest. It's the player playing against that individual machine. **Senator Schow** said that because it was computer controlled wouldn't it be possible to set a finite number for every 5,000 pulls, there would be three \$500 winners and six \$100. He wondered if it could be programmed with the symbols that are built into it to make it a finite machine. **Mr. Sertell** said yes – that that was what was called “rigging the machine.” **Senator Schow** said in the state of Washington they are required to have so many tickets, so many winners; it's all preprogrammed, which is --technically rigging that machine, too. **Mr. Sertell** said the technology is present and that almost any of these devices can be made into almost any other device by the simple exchange of parts. **Senator Schow** said it is all in how they are regulated and designed whether they be a true slot machine like they were in the past where the handle could be pulled a thousand times and never get a winner or it could be pulled three times in a row and get the same winner if it was just going strictly by the odds of how many symbols on each wheel if they were just counterbalanced. Now they are done by computers so today's slots say in Reno or Las Vegas are not the same as the slot machines that were used 20 or 30 years ago. **Mr. Sertell** said the difference is in the electronic technology. The machine in the center is controlled by an electronic random number generator which is programmed and tested by a laboratory to basically blindfold itself and to reach into an electronic goldfish bowl and pick out a number where the reel is going to stop and then it blindfolds itself again, reaches into the same electronic goldfish bowl and picks out the destination for the second reel and again for the third reel. Basically, the odds can be programmed, they can be adjusted. That's the reason why the gaming laboratory is so critical in today's legitimate gaming society. **Senator Schow** said in this state slot machines are illegal, but the definition of slot machine that is illegal in this state is a different machine technically than what is traditionally called a slot machine today because the machines with the technology have changed completely. **Mr. Sertell** said the technology has outstripped the legal definitions in many cases, particularly the Johnson Act.

Commissioner Forrest wondered if, from the point of view of the player, it would be possible to have an electronically-controlled slot machine, give it the same odds as one of the machines under discussion today or would it always be fundamentally different. His thought is that from the point of view of the player who comes in, if the casino owner had two machines – the one that's contemplated by compact amendment and one [?] slot machine that's electronically controlled, could a situation be generated where from the player's viewpoint his odds would be the same whether he played one machine or the other? **Mr. Sertell** said the processes would be radically different. The processes are important to note. He pointed out that in both of the pull tab machines that were demonstrated earlier, the essence of the game in the mathematical algorithm at the printing press that prints the pull tabs that is a finite series which no one can change once it's been printed. The machine that is contemplated and which is before the Commission is an electronic cousin of that. Once this finite series is arrived at at the manufacturing computer, and sent to the operating computer, no one can alter that. If a player is on terminal five and if another player is on terminal four, if the next scratch ticket to come out of the computer is going to be a winner and the player at terminal number four is put in before the player at terminal number five is, the player at terminal number four gets the winner, terminal five does not. Each has an equal chance at it, but the money that goes in first wins. With a slot machine-type arrangement, each individual play is arrived at at the point of sale. The machine doesn't know where it's going in a legitimate jurisdiction (unless it's rigged) until the handle is pulled or the spin button is pressed. In the case of the proposed machines, the next combination of tickets is a known factor within the computer. The patron doesn't know it but the computer does. **Commissioner Forrest** said he thought he followed that, but his question still was, in the finite series of a proposed game, after a player has played in five times, the odds have changed, whereas with the electronically-controlled slot machines, after five plays, the odds would remain what they were in the beginning. **Mr. Sertell** said yes they always remain constant even, for example, if a player is playing at a machine which has a million handle pulls in a cycle and in which there's only one grand jackpot

7-7-7, for example, if player A wins 7-7-7, on this play and walks away to go claim the winnings, and walks up to the machine right after player B, even though player A just won the grand jackpot, player B also could win a grand jackpot on the very next play. The odds are still a million to one. **Commissioner Forrest** said player A won on 7 the first time but player B bets on 7 has the same chance of winning. **Mr. Sertell** said that was correct. **Senator Schow** said the machine could be programmed so that once it's hit that grand jackpot of 7-7-7, that it would not go back to it until a new series was put in. **Mr. Sertell** said yes, and that would be rigging the machine. **Senator Schow** said that when these finite games are in existence, where the operator pulls the ticket out of a bin or whether the player goes up and puts money somehow into the machine those are rigged machines because it says there's only one \$500 winner. And there can't be two so it's technically the same thing. He said that using Mr. Sertell's terminology, both are rigged machines. **Mr. Sertell** said he disagreed in a sense. In the machine that's proposed, if there are 5,000 plays, those 5,000 plays if they were stacked up are placed into a computer and no one can alter those. The next player's going to get the top ticket in line whenever it comes out. One of the illegal machines, the essence of the game is in the machine. With Senator Schow's proposed machine the essence of the game is in the scratch ticket draw. A player plays against that series of 5,000 outcomes, not against the machine. **Chairperson McLaughlin** wondered about the lottery part of the proposed machine. **Mr. Sertell** said that in the lottery part the player plays against the numbers drawn at random by the lotteries machine itself. Using a red dot to illustrate his points, he said that in the proposed system and using the lottery part for example, the online game, once the patron tells the terminal "I'd like to play" the terminal sends a request to the server that says "Okay, we've got a live one here. Issue us another game outcome." The patrons put their numbers in. If the lucky number happens to be the player's birth date or something, he or she plays those numbers. As he understands it, the terminal will contain a limited random number generator for a quick pick, the same as took place today. So the patrons register their numbers and once every 30 minutes, server will draw the winner. If the winner matches the player's numbers, the player wins. The player is playing against the numbers drawn, not against this terminal. In the case of the scratch ticket game, the scratch ticket contains outcomes placed inside from the manufacturing computer itself. These outcomes, for example, 5,000 outcomes, once they're available in here, the next outcome will be issued to whichever terminal requests it next. So that if player A is playing terminal three he or she gets the next one out of the box if his or her money goes in first. If player B is playing terminal two gets their money in before player A, they get the next ticket and player A gets the second one. So, in effect, the patron here is not playing against this machine. They're playing against the game. The outcomes which are stored in the server and manufactured here in your manufacturing computer.

Commissioner Forrest said if there was a set that had 100,000, instead of like 10 or 15,000, the larger the set in which a player is drawing, the closer the [?] of random as far as from the player's viewpoint as Commissioner Forrest sees it, and he wondered if he were missing something. If the traditional slot machine modified or run electronically, it's a new deal each time as far as the machines' likelihood of what it turns up. If there was a lottery with three tickets, it's quite a different situation, but if there was a lottery with three million tickets, it seemed to him that it approaches from the player's viewpoint the same randomness that existed at the beginning. It's always fixed; it depends which tickets the player gets, but the larger the number of tickets it seemed to him, the more it becomes a random choice. **Mr. Sertell** explained that all slot machines containing a random number generator have the outcome of that generator checked by a laboratory according to the chi-squared test which is a mathematical test to detect the presence of a predictable pattern. If it is not predictable, then it is random. Scientists tell us that there is no such thing as a true 100 percent random generator. Technically, these should be called pseudo random generators. If they are played for a million years, apparently, a pattern would evolve, but to the player, there's not likely to be a pattern. To the casino operator, the important part then is that the patron who wants to cheat the game cannot come in with their pocket calculator, watch the game's results for 20 minutes and then adjust their bets accordingly and cheat and predict the winner. In Atlantic City where he comes from, there was a large demonstration slot machine

in the lobby of one of the casino hotels and they forgot that folks had portable computers these days. The reels were so big and they spun so slowly that the crooks came in by the droves with their own portable computers and cleaned them out. They won 15 times in 11 days and the casino stopped the production immediately thereafter. To the patron who are in front of one of these, the inability to predict the outcome is basically where we [who? the industry? Regulators?] are headed with the randomness. **Chairperson McLaughlin** asked if Mr. Sertell if he had an interest such as a product or machine to sell with regard to the issue before the Commission. **Mr. Sertell** said he had no investment in this issue.

Senator Schow announced that he won't be on the Gambling Commission next year due to the outcome of the recent election; however, he will be at the Commission meeting in Vancouver. He thanked everyone for his and her contribution and said this has been a great experience. He thanked the Commission and the staff for helping him to learn. **Chairperson McLaughlin** said the Commission has certainly enjoyed working with him as well. She said she heard Commissioner Heavey say that Senator Schow was the best chairman he had ever worked with. **Commissioner Ludwig** added that he has really enjoyed the fact that Senator Schow was an ex officio member of this Commission and a great asset. He had the privilege of working with him one year in the State Senate and they were from different political parties, but Senator Schow and he became good friends during that time, and he hoped they always would be.

Commissioner Herbold said that she had requested Mr. Sertell's presence here today because he was so helpful in the Shoalwater [?] case and she wanted to summarize in the form of a question, what he had said. Based on what Mr. Sertell understands Washington law to be, the prohibitions against certain kinds of devices, coins, currency, playing against the device – all of those stipulations – is it his opinion that the machine that is before the Commission for consideration at this point is a legal machine in the state of Washington? **Mr. Sertell** answered yes, that was his opinion – that it was legal.

Commissioner Heavey wondered if the cartridge that goes into the machine that puts the finite number of games in the machine, was an integral part of the machine...**Mr. Sertell** said it is his understanding that there is no cartridge going into the machine. **Commissioner Heavey** asked what is that they do to select this list of finite number of plays. **Mr. Sertell** said his understanding is that the manufacturing computer is given a mathematical algorithm to pursue. The computer follows the mathematical directions that have been given to it by the regulator body. Once that algorithm is approved, the same as they would approve an algorithm for selection of pull tabs, for example, the directions that are followed by the manufacturing computer simply send numbers and set them aside in groups such as he was demonstrating to the actual server. That's not a cartridge. That's a series of electronic signals. **Commissioner Heavey** thought that would make it even more of an integral part of the machine. **Mr. Sertell** said not from the gambling point. **Commissioner Heavey** said the Statute says the player plays against the machine and is an integral part of the machine. He wondered how it was different when a finite number is set that a player can play in a machine. He asked how that would be different than just selecting as a player would in a slot machine, the number of positions that can play and creating the odds. **Mr. Sertell** said the difference is that in the slot machine, the essence of the game rests with the random number generator that resides in the computer in the machine itself. That own device. Here, the essence of the game resides in the decisions or outcomes selected by the manufacturing server or computer and stored within the, for example, scratch ticket game server. There is quite a difference in that these terminals – so-called dumb terminals – do not select an outcome. They simply request a ticket or a game-play from the main computer. **Commissioner Heavey** said his understanding of the law was that they're not just talking about the "dumb" terminal because it says "the machine or an integral part of the machine." He said the server is an integral part of that "dumb" terminal and what Mr Sertell seems to be saying is because a formula is set in there in advance, the player is no longer playing against the machine, the player is playing against the formula that's put in there by an individual. The other one is that a player is just playing against pure odds, but are established by the number of positions that are put on the

reels. He said he did not understand the difference. **Mr. Sertell** said it might be helpful to say that the player is playing against an entire system instead of a stand-alone device.

Commissioner Heavey said he understood that, but the point is that the Statute doesn't say you play against the machine, it says "the machine or an integral part of the machine." So this whole system is an integral part of the dumb terminal. **Mr. Sertell** said Commissioner Heavey was asking for a legal conclusion and he is not a lawyer. Commissioner Heavey said Mr. Sertell had told them it was legal. **Mr. Sertell** said he had given him a technical opinion. **Chairperson McLaughlin** said she had asked Director Bishop how was this different from how the Lottery works because the player takes their money to the clerk who puts the numbers if this "dumb" terminal and then ultimately a server somewhere picks the numbers – whether it's done with balls or whether it's done with a computer like the Keeno is. She said the Lottery spokespersons will be discuss this with them later. **Commissioner Heavey** said if this is a legal machine, it is available to every licensee in the state. **Chairperson McLaughlin** pointed out the exception that there is only one Lottery in the state so far. **Commissioner Heavey** said that was not a Lottery. He said she called that a lottery and that is not making a selection after the player picks the numbers. This requires picking the numbers and then making a selection. **Commissioner Forrest** said that technically it would be no trouble to combine in one physical machine those two functions. **Mr. Sertell** said none at all. **Commissioner Forrest** wondered if that would change his opinion. **Mr. Sertell** said it would not because basically what a player does is picking the winning outcomes in the case of the scratch ticket far in advance of the patron's actually playing the terminal. Those outcomes are preordained as opposed to the slot machine where the outcomes are only arrived at at the moment of sale. When the player pulls the handle and spins the reels, that's when that machine arrives at a determination. In this machine's case and in the State Lottery case, those numbers have been arrived at in advance similar to a pull tab series. **Chairperson McLaughlin** asked if it made any difference how many people were playing. **Mr. Sertell** said no it should not because the concept is the same. Chairperson McLaughlin said ultimately if Ed and Pat and she were playing three different terminals and they all just happened to pick the same numbers, they all would win. Mr. Sertell said his understanding was and he thought Director Bishop had explained it earlier, they are talking about the online game with the drawing every 30 minutes. That if three players each pick the same lucky number, that the three players would then split three ways or [?] jackpot. **Commissioner Heavey** said he doesn't have a problem with the online lottery because Mr. Pharris had convinced him that it was legal because it was just another way of playing the Lottery. His problem is that, if this is a legal game, then it's available to all licensees in the state. That was the only point he was making. He said it was not just limited to tribes unless there is something he does not know about the Lottery law that may change this. **Mr. Sertell** said he would have to defer to the Lottery folks on that one. **Chairperson McLaughlin** said the Lottery could put a terminal in every licensee's place. **Commissioner Heavey** said this is not the "Lottery" [did he say "Laundry"?] this is a scratch pull tab game. **Chairperson McLaughlin** said one of the games were. **Commissioner Heavey** asked her if this was not a scratch pull tab game. **Mr. Sertell** said the two games that were present were scratch pull tab lottery game. **Commissioner Heavey** asked how that was different from the scratch pull tab. Was he just substituting the word "lottery" for "pull tab." **Mr. Sertell** said no, there are several important distinctions, but he should defer to the lottery folks. The one that comes most obviously to him as a non-Washington resident is that he understands Washington pull tab to be the game of pull tab as it existed in 1973 in which case it requires a paper-banded ticket which is a significant difference physically. **Commissioner Heavey** said that may be a distinct difference, but if a player can play a scratch pull tab – the only thing this doesn't do is take out a ticket. If it took out a ticket, then it would be a scratch pull tab game. **Mr. Sertell** acknowledged that it might depending upon how it was configured. The building blocks are available to do it almost anyway they might like to. **Commissioner Heavey** said he coming back to his contention that if they can approve it for the tribes they can approve it for the non profits. Mr. Sertell said he had no answer for that issue.

Commissioner Forrest said he thinks he understands the distinction. But if it is looked at as a social phenomenon, it's a recreation that's sometimes abused just like alcohol or [?] of gold is

sometimes abused, but from the point of view of the public participating, what real significant difference is there between the traditional slot machine and this. **Mr. Sertell** said they are both a gamble, the arrangement of the game itself is quite a bit different in that the essence of the gamble if he would walk up to a slot machine is contained by and within that machine itself. If a patron walks up to one of these terminals at the Commission's proposed system, the essence of the game resides basically in the manufacturing computer, not in that "dumb" terminal. There could be 500 terminals or 425. **Commissioner Forrest** said a person can gamble on a horse race or a dog race and there's some difference, but it seemed to him that the essence to the gambler, to the public who is participating is the same thing. He wondered if Mr. Sertell with all his years in the industry – Commissioner Forrest thinks he understands the distinction as the mechanics, but when looked at as a public recreational activity, he could not see that it made any difference. **Mr. Sertell** said the example of a dog race and a horse race is a good one. The person who gambles in any of these three scenarios including the horse race is gambling. The person who gambles at a horse race – the contest or the uncertain outcome – takes place on the race track. In the slot machine, the uncertain outcome takes place in the random number generator inside that machine. In the system that's been proposed to the Commission, the uncertain outcome is manufactured in the manufacturing computer stored in smaller batches or in the server itself or the operating computer and issued to whatever player terminal requests the next output

Commissioner Heavey said the only issue he sees here is, is the server that creates these series, is that an integral part of the system and it is as far as he can see and so therefore, the player is playing against a machine which is illegal in the state of Washington. He said that was his understanding of the law. He doesn't see how someone could say that this manufacture server is not an integral part of the system. **Chairperson McLaughlin** asked then how the Lottery is legal in the state of Washington; **Commissioner Heavey** said it was legalized by Statute.

Commissioner Forrest said he did not think Mr. Sertell could resolve all of their problems but he had clarified some of it and thanked Mr. Sertell for his contribution.

James Maida said the questions the commissioners were asking were fascinating because they show that this Commission and everyone who has been involved in this has a real deep understanding. He said he testifies in front of commissions all over the world and he has seldom heard the caliber of questions and thought processes he had heard today. Mr. Maida said he is the president of Gaming Laboratories. He is an electrical engineer, computer engineer from Lehigh [?] University which is a small engineering school on the east coast. Upon graduation he went to work for the New Jersey Division of Gaming Enforcement. Very much like the Washington State Gambling Commission, they are charged with regulating gambling throughout the state of New Jersey which is where he first met Director Bishop. While there he was in charge of testing all of the slot machines and all of the gambling equipment for the state of New Jersey. In 1988 he went to law school and graduated from Rutgers University School of Law in 1990 and currently he has practiced law in five states – New Jersey and Pennsylvania being his two home states and Colorado, Washington D. C. and Florida.

Mr. Maida said his company now only tests 90 percent of the slot machines in the world, but they also provide regulatory advice, how to set up regulatory commissions, how to regulate gambling from 350 governments throughout the United States and around the world. They have offices in Mississippi, Colorado, and New Jersey. They have two in Australia, one in South Africa and recently they opened up an office in Amsterdam, Holland because they consult a number of jurisdictions in and around Europe who are actually 10 years behind in the regulation process that is seen in the United States.

Mr. Maida said that he got involved in Class II and Class III gaming in the early to mid nineties. He testified in front of the United States Senate and House and was called before the National [?]

] Gaming Commission informing of the rules that have now decided whether things are Class II or Class III. He also testified nationally on various issues. He said he probably could take more cases than he does, but he must believe in a case, but he does testify mostly on balance about 60 percent for state governments and federal governments, and 40 percent for tribal issues.

Mr. Maida said he is rather new to this process that has been ongoing in the state of Washington. He arrived in February of this year after being contacted by some of the tribes and agreeing to be at the negotiations by state officials. He arrived at the same time as the federal Judge, Mr. Ramirez who was assigned to arbitrate this case, the federal California judge. For the last seven or eight months, he's attended negotiations and has tried to explain the technology, explain why it's different from a lottery or the pull tabs and explain this is sort of what they think the law is and how they were going to move forward, and get a machine that's legal on the Washington State law and that is good for the tribes and commercially viable and allow everything to move along. He said he submitted written testimony to the Commission. That testimony centered around the legality of the device and why he thinks the device is legal. He believes that the device in question is clearly legal under Washington State law. He said in his personal view, it's not even a close question as to whether or not it's legal under Washington State law when it is broken down into its supplemental parts and studied.

Mr. Maida said that in examining the Shoalwater Bay case, the judge in that case was rather specific. She found that there were no handles, there were no spinning reels, there was coin in or out. Very important, she found that there was no infinite random number generator – that the people were playing against the machine. His view which has been upheld in Judge Van Sickle's Order and in the Shoalwater Bay case is that players are playing against each other. They're not playing against the machine. That's the key part. The players in the proposed device are playing in groups of 20, 30, 60, 100, whatever it would be and then once these pull tabs are stacked, if he gets the scratch ticket next, the other person can never get that. In a casino if player A gets 7-7-7 on a machine, he can get 7-7-7 on the next [handable, and the next handable, and the next handable???]. The odds of the player getting that is one in a million times one in a million, but the point is that it is possible. When a player plays in the proposed game, once the \$500 or \$1,000 winner is gone, it is gone. There is zero chance for a player to ever get it again. And that's fundamentally a huge difference. And that is why it is like the Lottery. If he would go out today in a scratch game and he gets the three treasure chests and he wins a lot of money and if there's only one of them, another player cannot get behind him in line and get it. But if he is in a casino in Atlantic City or Nevada and he wins \$1 million, he has the same chance of winning that \$1 million. That's the difference between finite and infinite. Playing with respect to the machine, the player plays with respect to that machine on that middle device because once he gets in front of that machine, the next player cannot have at it. If there are 10 of those Bali 5,000 [?] machines lined up on the wall, what he does on his machine can never affect – impossible – can never affect the player next to him – zero effect. But if 500 of these machines that they are discussing today are lined up against the wall, and he is in the middle position and he gets this \$500 or \$1,000 winner, the guy next to him can never get it.

Chairperson McLaughlin said she was just told that the three players could all win if they picked the same numbers. **Mr. Maida** said that pertained to the online game. **Chairperson McLaughlin** said she was assuming that both games are one terminal. **Mr. Maida** said the online game (his comments so far have been to the instant scratch ticket) but on the online game, they would choose numbers – your birthday, my birthday, we have the same numbers for instance then they could share, but he was talking about on the scratch ticket game. On that side, once he wins and gets his thing out and it's his and he's scratched it off and won, the other player cannot win by definition of the way the game is assembled, there is no way that the other player can win.

Chairperson McLaughlin said that in other words it's the same as getting a paper scratch ticket at the counter – no one can have that but you. **Mr. Maida** said that was correct. He said it's

really a ticket-delivery system. It's no less a ticket because it's electronic on the screen, but it delivers it to the player from that back computer, one at a time to whoever asks for it next, just like he would deliver to the player a ticket over the counter. Once he hands it to the player it's the player's ticket. And by definition, he as affected the rest of the game [[end of tape #4]] individual play against such devices [?] terminals shall be prohibited. What he has read from various sources, the Washington State Legislature did not want Washington State to put in video-lottery terminals. That's playing poker. Playing poker against the machine like they did in South Dakota, West Virginia and many other lotteries. So in this case, the game is legal under state law because a lottery can have a game such as this where players are not playing against the device, but they're playing against each other just like in a scratch-ticket game they play against each other.

Mr. Maida said he thought the [Provoso ??vice ?? the tape is garbled and I couldn't make out what the words were, sounded like I typed it] meets both Judge Van Sickle's ruling and his summary judgment order and obviously the judge in Shoalwater Bay case and the thing, these devices have been approved for use in California and New York State where their Statutes are very much like Washington State Statutes that prohibit play against the device.

Commissioner Heavey said the Commission staff has said, for as long as he's been on the Commission, that whatever device is used for scratch tickets, punch boards, pull tabs, it has to produce something the player can hold in his or her hand. Otherwise, the machine is illegal. As he understands what Mr. Maida is telling them today is that interpretation is erroneous. **Mr. Maida** said what he was telling them today is that that was the interpretation of Judge Van Sickle in his Order did not agree with. **Commissioner Heavey** said to him that meant they were saying it was erroneous. **Mr. Maida** said what he was saying was at the time that opinion was written, he said he didn't think all of the "precincts" were reporting in. At the time Judge Van Sickle's opinion was written, the Attorney General of Washington State argued before him just what Commissioner Heavey argued – if the machine can't be played without the device separately – and Judge Van Sickle said, "No, slot machines are gambling devices. We're not going allow you to negotiate for slot machines, but Judge Van Sickle said there are gambling devices that the Commission must negotiate for, so the judge said there are gambling devices that are not slot machines and go get busy and negotiate. Further help was given when the Shoalwater Bay case came down because that judge redid what Judge Van Sickle did but this time, Judge Rothstein's decision took the skeleton of Van Sickle's opinion and said "Okay, I've got a device. Mr. Sertell came in. He told me what all it is. Does it fit under the Lottery Act?" They said "No, it doesn't fit under the Lottery Act because there's an infinite random number generator. If there's an infinite random generator, Shoalwater Bay, you lose." Does it fit under Gambling Act. "No, I see money going in; I see money going out and I see a random number generator. You lose." And then there was something about amusement. There's some other pieces of the pie as she went down through that so, Mr. Maida said he would not say the Washington State AGs were wrong. In hindsight, there's wrong today looking back on what's happened in the last year, but at the time written, he would say they were making their best guess on what they thought Washington law was. Today, it's clear. Playing the game separate from the device as a thought process of saying whether that makes it an illegal device is clearly not right. No Washington State court has adopted that. What they've asked now is "Are you playing against the device with respect to the device?" What Mr. Maida is saying in this case is once you play as a group – once somebody gets a ticket, nobody else can get it. And that means he is playing against someone else. That slot machine in the middle, he doesn't care what the other player does. He doesn't even care who is standing next to me, in fact no one needs to stand next to him and he can still win.

Mr. Maida said that on the regulatory aspect. They are in the middle of this negotiation and the tribes in this state are trying to get the scope down, but one of the things the state of Washington did was require high degrees of auditing, high degrees of regulatory control and the state and the tribe also have the same high degree that the are not found. For instance auditing. The state has a right to go in and audit these computers. The manufacturing computer could be audited by

Director Bishop and his staff. The central computer could done and all the terminals can be audited. That's very important. He referred to an earlier reference to pulling a game. If too many winners go out, the game can be pulled and that's how it's done in pull tabs. Not so, in this case. If the tribe pulls a game before 75 percent of the prizes are paid, they pay a penalty. They have to take that money that would have been awarded if they had let the game run, and they have to dump it into the next game for future games. So the tribes are more restricted in this compact when the can pull the game. And that was insisted upon by the AG's office and certainly Director Bishop who brought that to attention in July.

Mr. Maida said there are three computer systems that are operating this. Judge Heavey had asked before if it was an integral part. At one point there were two computers, but they have moved the manufactured computer off line so that it is not an integral part. Once they are stacked on the central computer, that manufactured computer could be tossed out the window, turned off, throw it away.

Commissioner Herbold asked if the central computer could be tossed out and still play against the "dumb" terminal. **Mr. Maida** said the central computer could not be tossed out because it's a central repository that you're distributing tickets. That's what makes it so key. That's why he is playing against you because they are all getting them from the same pool. **Commissioner Herbold** said that all of those pieces, once the manufacturing computer has given the set to the central computer, you may be able to take that off line, but the central computer and the terminal are integral to each other. You cannot play the game without the two of them together. **Mr. Maida** said that was correct because.. **Commissioner Heavey** said the central computer cannot be programmed without the manufacturing computer. **Mr. Maida** said the answer is for various security reasons you can do anything, but they didn't want that to be done. **Commissioner Heavey** said he didn't have as much problem with it as he did before when Mr. Maida told him that what the judges have ruled in this case is that the player doesn't have to have something to hold in his hand. **Mr. Maida** said that was his view and he is not a Washington State attorney, but he has read these cases and no judge has said it needed to be outside. It's whether the player is playing against the machine. And that means the player plays against the slot machine and is the only one affecting that game and that game is interacting with the player who doesn't care what anyone else is doing around him or her and that's what Mr. Maida has written in his testimony. **Commissioner Heavey** said that if that manufacturing computer was an infinite random number generator and that put that into the central computer that led it to the dumb computer is they would have a slot machine. Mr. Maida said that that was why the exact auditing requirements were being done by the state because they are not loading numbers in this scratch ticket central computer, they're loading game outcomes. So even if there were an infinite random number generator there is only 50,000 scratch tickets or 25,000 or 100,000 scratch tickets to load in. There is actually no random number generator that is used ongoing and that was what was very key in Shoalwater Bay case. What's happening here is that it's just is merely mixing them just like you would pour things into a bowl or whatever. They are being mixed, frozen, and then distributed because that was what insisted by the state's people all along in this negotiation.

Commissioner Heavey said he was asking a lot of questions to satisfy his curiosity. It's a done deal, the Governor has made a policy decision, he said he was not a policy maker, he said he was not going to vote against his governor even though he didn't appoint him, the governor who did appoint him would have hit him over the head if he voted against this deal. He was a lot friendlier toward the tribes. **Mr. Maida** said he appreciated his position and that he was only here today to try to explain what the previous speaker might have glossed over because the infinite and the finite is very important in this. He said he didn't want anybody walking away saying, "Ah, it's just a slot machine that we rearranged and made all kind of parts, because it is clearly not what that is. The state's too smart for that, the tribes are too smart for that. **Commissioner Heavey** said he appreciated what he was saying, but what he is saying is that this has been very

useful to me so he can make decisions in the future as it relates to the non profits and the proper licensees when they come and ask the Commission for these machines. He said both he and Mr. Sertell were essentially saying the same thing. **Commissioner Forrest** asked if once a player played the game how often they play it, whether it's half an hour or an hour or days or weeks or months, really is irrelevant to the legality – that's a marketing matter. **Mr. Maida** said that's correct; once they're frozen, they're frozen and they play them until they run out. And if it takes ten years or ten weeks for them to run out they're going to eventually run out.

Susan: the following is in italics because I typed it verbatim using "you" and "I" words just as he was using them, rather than "the player" or "Player A and Player B" . I simply could not understand what he was saying well enough and I was afraid I would choose the wrong pronoun and make it unintelligible to those who do understand what he's saying.

Commissioner Herbold asked about the online lottery if those numbers are randomly generated but the payout has to be 75 percent, how do they do that? **Mr. Maida** said he wanted to call it the "Online Game" because he liked to use a little vernacular. He calls it the "You pick 'em; we pick 'em; we match 'em." You walk up and you pick 'em and so you get to pick 6 numbers from 1-36. Every half an hour under this proposal, I'm going to pick 20 numbers from 1-36 so I have 20 and you have 6; we match 'em and you get paid depending upon how many you have right so if you have 2 right you might not get anything, but if you have 3 right, you get 10, if you get 4 right you get 50, if you get 5 right you get 500 and if you get all 6 right, you're the big jackpot winner. He said "The way we set the percentage pay-out is – notice, I said that if you match 4 you get so much, 5, so much – well we know what the odds of you matching 3 or your 6 numbers matching any 3 of my 20 – it's called the hyper-geometric formula – and this formula and it's called the hyper-geometric distribution and it's how your lottery – and the lottery folks are here, they'll tell you that that's how they know on the back of their lottery tickets what's the odds of winning 6 numbers out of 36. The answer is 36 factorial over 26 factorial times 6 factorial. 28 factorial times 6 factorial. The point is that it's a formula so we set it by 75 percent because we know how often you should win. We know that you're going to win one out of every 22 points 7 times you're going to get 3 numbers right. So we're going to pay you 18 for that. So 18 over 22 is 75 percent or 80 percent." **Director Bishop** said don't we in fact set the odds in that particular game up by setting the prize amount? **Mr. Maida** said no, the odds of how much you win are fixed. The odds of you matching 4 out of numbers are always the same. It's the prize pool that you're talking about now. So how is it 75 percent is, is that we know how often you're going to match 4, 5 and 6 and we're going to pay you enough when you win 4, 5, and 6 to make sure that you get 75 percent back over the long term.

Commissioner Herbold asked if it mattered how many players have participated in the game in a half an hour? She also wanted to know if they figured that 75 percent on every 30 minute draw or over a period of 24 hours or week or a month? **Mr. Maida** said there were two ways of doing it. If it's a banked game, that means that there's fixed prizes for the lower tier. He would say that it's 75 percent calculated over the long term. If every prize is pooled, then you could say I'm going to award 75 percent of the pool every single time. In your state, in fact, I believe some of the prizes are fixed and some of the prizes are pooled so every night if you win – let's say you play the lottery here every week and you get 4 out of 6 numbers, there might be a fixed prize of \$500 and that's what you win any time you match 4 out of 6. Now when you match 6 out of 6, you go into the prize pool and if you're the only one lucky enough to win, you get \$10 million or if there's 5 people that win, you all split and you each get \$2 million. So, it's fixed. If the prizes are fixed and pooled, I think in your case in your state, and depending upon how big those prizes are that's how we set the pay out percentage. **Commissioner Herbold** said she hoped that the prize pay out all these numbers are computer generated for review because she doesn't think the tribes or the Commission have enough staff to do all those calculations at the end of a given period. **Mr. Maida** said one the latter sections of this compact amendment talk about all the reports that have to be generated and what has to be audited and what has to be saved for a period of 30 days and 60 days and five years and so forth and he said they can go back and find out every draw on the online game for a period of months. They will be able to tell the Commission

what is the pay out of scratch ticket game #105, the theme was "x" it was 25,000 scratch tickets, here's how many were dispensed, here's how much was winner, here's how many were lost, and so forth. With computers they can do anything with statistical data and they can make any report out and the Commission staff and the tribal staff and all the people negotiated put a lot of stuff in there about how much auditing data they will be able to get. That can be changed from time to time depending on the needs of the parties.

((LEFT HERE....))

Commissioner Heavey said he was not longer sure what 2 plus 2 equals. **Commissioner Herbold** said it didn't matter as long as he felt good about the answer.

Acting-Chairperson Forrest asked if they had exhausted the Commission's questions. He thanked Mr. Maida and asked if someone from the Lottery wanted to come to the front to tell them what was going on.

Commissioner Heavey asked if he could ask the representative from the Lottery a question. He wanted to know if he had anything like this system in his Lottery Games.

Tim Brown, Lottery Commission, said he thought the best way to compare or contrast the Lottery System is [tape cut out and I don't know if I missed something. He must have been walking away from the mic] our system [] has these connections. Basically, all the lines on this side that connect with the [] are gone [] we have a stand-alone system for drawing six numbers out of 49. Commissioner Heavey said they can't pick you up on the television. Mr. Brown then says he would start over. There a whole bunch of laughter going on.

The Lottery System there will be no connecting lines on this side. These would be our terminals. There's connection to the game accounting so that we can keep track of what tickets were sold, how much money was taken in. So that there is no connection. The drawing takes place independently of whatever happens with the machines. If nobody buys a lottery ticket, they will still be doing the drawing regardless. The drawing occurs independently of anything that happens with the machines. With the scratch tickets, of course, they have instead of a manufacturer server down there, imagine a printing press and the only connecting line that you have is the truck that brings the tickets in and then they get distributed to the various outlets, so the chart would be much simpler.

Commissioner Heavey asked if the Lottery's scratch ticket the same as a pull tab? **Mr. Brown** said it's essentially played the same way. Each ticket is predetermined to be a winner or not. There's a finite number of winning tickets in a batch and they are randomly distributed. They have a different series for each game. They will differ in how you win or how many total winning tickets there are per million, but it's all within certain parameters. **Commissioner Heavey** said "but you don't have anything like this. Mr. Brown said no they did not.

Chairperson McLaughlin asked if he agreed with Commissioner Heavey that if this proposed system is accepted by the Gambling Commission and Governor that it could ultimately go to every licensee or non profit in the state. **Mr. Brown** said he could not answer that because it was in a totally different world from his. **Chairperson McLaughlin** then asked John McCoy to answer her question. **Mr. McCoy** said the central legal issue there that distinguishes – the prohibition in the both the Lottery Statute and in the Fundraising Event Statute is essentially the play against the device. If you play against the device the Lottery may not have the device. If you play with respect to the device in a fundraising event, you cannot operate that in a fundraising event. From a legal standpoint, the question is are you playing against the device? If we accept this as not playing against the device, then that legal prohibition for both the Lottery and for fundraising event for pull tabs is not present. So it would not be prohibited. That does not mean that it's automatically authorized. There are other hoops that have to be jumped through, there are other things that have to occur. **Chairperson McLaughlin** wanted to know what those hoops were.

Commissioner Heavey said they would have to prove it. **Chairperson McLaughlin** said she thought there must be something more than that. **Mr. McCoy** said it would depend on the particular activity. **Chairperson McLaughlin** asked if the Legislature would have to act in any way. **Mr. McCoy** said that was a difficult question to answer. He didn't know that they would. He said there probably would have to be some regulatory changes take place. Those would be discussion amongst the commissioners as to how they would like to proceed. But the legal question that she is asking him is if we accept that this is not playing against the device, then that same analysis would apply to any other place in the Statute where that question arises, "Are you playing against the device?" and that would occur with regard to . . . **Chairperson McLaughlin** asked why hasn't lottery games just popped up everywhere all over the place. **Commissioner Heavey** said there were two different aspects to this machine. One is the lottery which is played every half hour after you've played within a five minute timeframe. The other is the scratch tickets which can be played continuously in the interim until you come to the lottery game and that's why they want to run the same machine so these people are at this machine playing their scratch tickets and then comes the lottery time, they [] the winner and then they play, so there's two different machines put into one. **Chairperson McLaughlin** said that wasn't the question she asked. **Commissioner Heavey** said the point was that the straight lottery is not legal for anybody but the State Lottery and because it's legal for the State Lottery, it's legal for the tribes. But it's not legal for other licensees and it's not legal for the non profits. **Chairperson McLaughlin** said that's what she thought, but why was he saying that it would be legal then. **Commissioner Heavey** said the scratch ticket part of the machine now becomes legal, so therefore the Commission can authorize those – that aspect of the machine – for licensees and for non profits. That's how he interprets it. **Mr. McCoy** said that in order to clarify that what he is basically saying is that there is a prohibition against play against the device. That prohibition would be gone, but it would still need to be an analysis as to whether or not other prohibitions might apply or whether there are other ways that it can be done that would make it legal. But that particular prohibition would be gone. **Commissioner Heavey** said that right now there is a requirement that says that it has to produce a piece of paper. They would have to eliminate that requirement. **Mr. McCoy** said that was the sort of discussion they are talking about that.

Commissioner Herbold said she missed the morning session and understood there was a representative from Oasis who was addressing the Commission. She said that a year ago they had an attorney general letter opinion with respect to the Oasis machine which stated that that machine was not legal in the state of Washington. She asked Mr. McCoy to tell her what the difference was between this machine and the Oasis that makes this one legal and the other one was illegal. **Mr. McCoy** said there were a couple of different particular things that have happened. One is the legal question just posed "Are you playing against the device?" In the sense that we are interpreting that differently, we're doing that based on what the court cases have said. We're not saying that the Court would say this, we're saying the Court could say this with regard to interpreting whether or not that is playing against the device. The other aspect of the Oasis game that's different, was that the Oasis game as it was presented to the Commission, included a random number generator. So that there was the one that was presented to us did that was the way it was described to us. But there is more than one configuration but that was one issue that was there was that the re-randomization of the pool. He said one of the ways he can distinguish between the online game and the scratch ticket game is that all lottery games are a pool. There's a pool of players. With the online game, the pool of players is determined before the winners are determined so that you create the pool, everybody that's in the pool is in the pool, they all have their tickets and then some other event occurs. The draw of the balls or the run of the machine of some sort. And the winning numbers are determined and then everybody goes back and as Mr. Maida calls it the "You pick 'em; I pick 'em; we compare 'em" sort of thing. Then that determines how the winners are done, but the pool is created in advance. With the scratch ticket game there's also a pool of players or pool of potential players that each of those tickets represents one purchase in a pool. But the winners are distributed amongst that pool in advance and you don't know who the winner is until you pull the ticket out. And that will be true of other pool games like scratch tickets and like the pull tabs. They follow the same pattern that is that

they are predetermined winners and then it's the activity of pulling the tickets out that determines whether or not you're a winner, but the winners are already predetermined. **Commissioner Herbold** said and that's not the case with Oasis – they were randomly generated? **Mr. McCoy** said it was a combination. The system they had then, it was a combination. There was a finite set, but then that set essentially was mixed each time. One of analyzing it, the distinction would be in a random number generated game, we're talking about slot machines if you take a deck of 52 cards and you want to get the Ace of Spades is the winner – that's the jackpot winner – in a standard machine game—slot machine or similar gambling stand-alone device—every time you walk up there, the deck gets shuffled, you get to pull one card out. And whether you are a winner or not depends upon which cards you pull. Then the next person that comes up there, they shuffle a 52 card deck, and you pull the next card. The way this system would operate essentially the deck would pre-shuffled and set in place and then the next person that comes up takes the card off the top. As you go through the game, the cards are taken out and there's only one Ace of Spades in that set so that that's essentially the same way this game is played. There's a finite set. There's a set number of winners and however the deck – the deck is not re-shuffled. The way the Oasis game that was described to us at that meeting was each time a card is pulled out, the rest of the deck was shuffled – there was still a finite set, but then the rest of the deck was shuffled and that was for security purposes primarily. But that was the way that was operated and that was one of the concerns we had was the machine had the ability of re-randomizing the results each time. **Chairperson McLaughlin** said that if was the rest, it would still be only 3 Aces left in the rest of the deck, so how's that different? **Mr. McCoy** said that was the way we analyzed it at the time and that was one of the issues that we dealt with at the time. **Chairperson McLaughlin** said that if they were to re-write that attorney general's opinion, would he change his mind about what he said about the Oasis? **Mr. McCoy** said that if he were perfectly frank there were two different analyses that we used. One was what they thought – our view of what the legal analysis was – the second analysis that we gave you was what we thought the potential results could be and we don't know which way the Court would go. The Court could accept the analysis we used with regard to the Oasis game, the Court say "Well, as long as you don't have a random number generator, then it's an okay device." None of the courts that have addressed the issue have ever addressed those to questions. **Chairperson McLaughlin** asked him how he would re-write his memo or would he? **Mr. McCoy** said he was hoping they would not ask him to.

Commissioner Forrest said he knew the Lottery was under certain legislative constraints – how often they operate and so forth, but he wondered if there were anything in the description of either of these scratch ticket or the online part of this that seems in consistent with Lottery philosophy or if you go to the Legislature and say well we'd like to have these machines too? He asked if there were some radical difference involved in the legislative framework. **Mr. Brown** said the one obviously radical difference is being able to do multiple draws in one day and whether they would go forward to the Legislature to ask for that or not, he said he was not in a position to say, but that is the most noticeable difference in his opinion. **Commissioner Forrest** said if that were removed, if the Commission chose, they could probably have game something of this general nature – not the exact, but what is proposed in the compact amendment. **Mr. Brown** asked him to repeat his question. **Commissioner Forrest** said all he was trying to do was put this in context of the Lottery world and he knows that there are restraints on how often the Lottery can have drawings, but if that constraint was either removed or relaxed, the impression he had from the discussion today is there was nothing else about the Lottery that would prevent the Lottery Commission instead of having scratch tickets out in my little hamburger stand, have one of these machines in my little hamburger stand. **Mr. Brown** said he could not see anything else. Also the connection to the server itself that is different from what they have had. **Director Bishop** said he thought that was only diagrammatically. There is no connection allowed between those. In other words, what we see is data going one way to go to the accounting system and then after the game is drawn, we get that same accounting system data that goes back to the terminal so they're not connected [there's talking going on and I can't here the rest of what he's saying]. **Mr. Brown** said because we'd probably have to look a little deeper though, but for right

now the primary difference is the frequency of drawing.

A woman from the audience Lottery??? Said if this is conceived as not playing against the machine, then as in the Lottery Statute, this would be conceived as not playing against the machine, but there would have to be regulatory changes to make anything like this happen. **Mr. McCoy** said that is the legal prohibition spoken about earlier. This is an analysis of a legal prohibition and if the basis for it is that the Lottery can do it – it would be hard to say that the Lottery can't do it – if that's the basis for the tribes being able to do it. There are, however, practical issues. The distribution system with the Lottery for the scratch tickets is a significantly different animal than they are talking here, but that's a distribution system issue that is regulatory and not legal in the sense of prohibitory. Because it's not a prohibition. It's just the way it's actually done now. **Chairperson McLaughlin** said the Lottery has the entire state to gain a customer base from for each game. The tribes would only have the people who come to their facility from the surrounding area. She said that seemed to her to be a big change if the state had the opportunity to do the same kind of machine, but had the whole state to do it from.

Mr. McCoy said there are practical considerations that go both ways.

Jerry Levine, attorney for the tribes, said there are some distinctions under the Gambling Act that are different than under the Lottery Act and the Commission is probably accustomed to hearing applications and licensees under the Gambling Act and this is a process under IGRA and they are sitting as a Commission on behalf of the state to review that and so, as he mentioned in the Spokane hearing, a kind of a hybrid here where they are really considering a lottery system and the lottery system has different considerations than a gambling system. Whether or not they permit an electronic pull tab is something as a Gambling Commission they may want to have to deal with with their licensees but right now they don't have an electronic pull tab. The devices they are looking at are dispensers or readers of a physical game. As a Gambling Commission that's been their limitation. What they do from there on is something that is within their jurisdiction. But the they are dealing with a lottery system. As a lottery system, the limitation on electronic scratchers would be the one that they built into this system which is that it's not individual play against the device because of by the way the Court has been interpreting it, but he wanted to thank everyone for giving them the opportunity to present this.

Commissioner Forrest asked if the commissioners are ready to close the public hearing.

THESE MINUTES SUBMITTED FOR COMMISSION APPROVAL,

Susan D. Yeager
Executive Assistant